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IN THE

Supreme Court of the United States

October Term, 1979
No. 79-1348

WORLDWIDE CHURCH OF GOD, INC., ET AL.,
PETITIONERS,

VS.

STATE OF CALIFORNIA, ET AL.,
RESPONDENTS.

On Petition for a Writ of Certiorari to the Court of Appeal of the State of California, Second Appellate District, Division Three

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE AND BRIEF OF

American Civil Liberties Union of Southern California

Americans United for Separation of Church and State Fund, Inc.

Institute for the Study of American Religion

Berkeley Area Interfaith Council

Christian Legal Society

Methodist Federation Fund

Committee to Defend the First Amendment Research Institute

AS AMICI CURIAE IN SUPPORT OF GRANTING CERTIORARI

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- Americans United for Separation of Church and State Fund, Inc.
- Institute for the Study of American Religion
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- Christian Legal Society
- Methodist Federation Fund
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As Amici Curiae in Support of Granting Certiorari.

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- Americans United for Separation of Church and State Fund, Inc.
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MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE OF

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Americans United for Separation of Church and State Fund, Inc.

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AS AMICI CURIAE IN SUPPORT OF GRANTING CERTIORARI

Pursuant to Rule 42 of this Court, the following organizations respectfully move for leave to file a brief amici curiae in support of granting a writ of certiorari in this matter:

1. The American Civil Liberties Union of Southern California is a non-profit organization and regional affiliate of the American Civil Liberties Union, having approximately 20,000 members. Since its founding 56 years ago, it has dedicated itself to the preservation and development of rights guaranteed by the Bill of Rights, notably including the free exercise and establishment clauses of the first amendment.

2. Americans United for Separation of Church and State Fund, Inc., a non-profit Maryland corporation, headquartered in Silver Spring, Maryland, is dedicated to the advancement of the civil and religious liberties granted by the first and fourteenth amendments. Its directors, members of many religious organizations, are also directors of Americans United for Separation of Church and State, a sister organization with some 40,000 members of various religious beliefs residing in all states.

3. The Institute for the Study of American Religion, an Illinois non-profit corporation headquartered in Evanston, Illinois, is a privately supported research facility for the study of small, non-establishment religious bodies and is dedicated to the advancement of their constitutional rights. It compiles and publishes the "Encyclopedia of American Religions" and the "Directory of Religious Bodies in the United States," two standard reference works.

4. The Berkeley Area Interfaith Council, a California non-profit corporation headquartered in Berkeley, California, consists of some 46 religious organizations encompassing Judeo-Christian, Eastern and New Age beliefs. It facilitates communication and aids cooperative action among its members, including action to enhance and vindicate first amendment religious protections.

5. The Christian Legal Society, headquartered in Oak Park, Illinois, is an organization of 2,000 judges, lawyers and law students dedicated to the furthering of Christian values and fellowship in the professional community. Through its Center for Law and Religious Freedom, the Society marshals legal skills and resources to protect and preserve constitutional guarantees of religious freedom.

6. The Methodist Federation Fund was organized under New York law to promote a sense of social obligation within the Methodist Church and to advance constitutionally guaranteed civil liberties, including the separation of church and state.

7. The Committee to Defend the First Amendment Research Institute was organized in the District of Columbia to conduct educational and related activities designed to foster the ideals of the first amendment and to assist those whose first amendment rights are in jeopardy.

Consent to File This Brief of Amici Curiae Was Requested of the Parties but Not Received.

These moving parties requested permission of the parties to this matter to file a brief amici curiae in connection with the petition for a writ of certiorari. Petitioners gave their consent, but respondent, State of California, declined to do so. This motion is accordingly submitted.

The Attached Brief Articulates, from the Informed and Objective Viewpoint of a Broadly Based Group of Major National, Regional and Local Religious and Civil Liberties Organizations, the National Importance of the Subject Case and the Magnitude of the Issues It Tenders.

The moving parties have joined together in one brief because they share one overriding interest in civil liberties generally and a particular interest in that fundamental lib-

erty, religious freedom; they share one perception of grave danger to that freedom posed by the general theory underlying the subject case and the specific threat presented by the contested discovery orders described in the petition; and they share one hope that the Court, if presented with the fullest possible arguments for both sides, will vindicate and preserve that freedom.

None of these amici is either a party to any of the actions involved in the petition before the Court or involved in any of the activities alleged by the respondent, State of California, to constitute wrongdoing on the part of the petitioners. As a consequence, they are in a position, because of their detached but informed status, to present to the Court an objective and knowledgeable point of view to aid it in considering the important issues presented by the petition.

This matter is of major concern to responsible national organizations interested in the preservation of civil freedom generally and in the avoidance of government entanglement in religious institutions specifically. The moving parties believe that the unique vantage points of these various amici afford a valuable perspective in assessing the fundamental constitutional issues presented to the Court.

For the foregoing reasons, these moving parties urge the Court to permit them to file the accompanying amici curiae brief and thereby to urge upon this Court that it grant the petition for a writ of certiorari.

Respectfully submitted,

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BRIEF OF

American Civil Liberties Union of Southern California
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AS AMICI CURIAE IN SUPPORT OF GRANTING CERTIORARI

Introduction.

The defendants in the captioned case have filed with the Court a petition for a writ of certiorari to the California Court of Appeal. The following organizations, more fully described in the motion attached hereto, as amici curiae, strongly support this petition and urge that it be granted:

American Civil Liberties Union of Southern California,
Americans United for Separation of Church and State Fund, Inc.,
Christian Legal Society,
Institute for The Study of American Religion,
Berkeley Area Interfaith Council,
Methodist Federation Fund, and
Committee to Defend the First Amendment Research Institute.

The several interests of these amici find a compelling unity in their common alarm at California's Public Trust Doctrine,[1] which holds that churches are not private institutions of worship but are public trusts, accountable to the State and subject to its unlimited scrutiny. Second Amended Complaint ¶¶10, 11 and 25, App. at 15-16, 23-24. If allowed to stand, this doctrine would accomplish a retrogression of over three centuries. It would redirect our steps toward the time, as noted by Thomas Jefferson, when "at the common law, heresy was a capital offense, punishable by burning,"[2] and it would re-enshrine the "arrogant pretension, falsified by the contradictory opinions of rulers in all ages and throughout the world . . . [that] . . . the Civil Magistrate is a competent Judge of Religious truths . . ." as well as the "unhallowed perversion . . . [that] . . . he may employ Religion as an engine of Civil policy."[3]

[1]The California Attorney General bases this doctrine on the common law, adopted in California by Cal. Civ. Code §22.2 (West, 1980). State's Opposition to Demurrer to the First Amended Complain (dated 28 June 1979) at 10, *People v. Worldwide Church of God, Inc. et al.*, Case No. C 267607 (Superior Court of the State of California for the County of Los Angeles), App. at 1; transcript of hearing of 10 January 1979 in *People v. Worldwide Church of God, Inc. et al.*, at 7, App. at 3; State's Brief in Opposition to Petition for Certiorari (undated) at 16-17 and 19-20, *Worldwide Church of God, Inc. et al. v. The State of California*, October Term 1978, No. 78-1720 (United States Supreme Court), App. at 4-5; Defendants' Response to Plaintiffs' Motion for Judgment on the Pleadings and Plaintiffs' Motion for Summary Judgment; Request to Take Judicial Notice (dated 20 August 1979) at 4-5, *Lopez, et al. v. State of California, et al.*, Case No. C 276767 (Superior Court of the State of California for the County of Los Angeles), App. at 6-7. Consequently, the issues raised by the petition are potentially applicable to all churches in common law jurisdictions, however organized. The Attorney General also asserts that the common law basis for the State's actions is expressed in former Cal. Corp. Code §9505 (West, 1979) (App. at 8) and current Cal. Corp. Code §9230 (West, 1980) (App. at 9-10).

The constitutional validity of this Public Trust Doctrine is squarely tendered to the Court for decision by the petition, through the specific challenge it presents to one of that doctrine's principal corollaries, namely the State's asserted right to control and conduct unlimited examination of churches through the medium of coerced disclosure.

Amici believe that the power claimed by the State of California and exercised through the discovery orders attacked in the petition represents a clear and present danger to first amendment religious rights.

Statement of the Case.[4]

The State of California, through its Attorney General, asserts that all churches and religious organizations are pub-

[2]Thomas Jefferson, *Notes on the State of Virginia* 263 (London 1787).

[3]James Madison, *Memorial and Remonstrance Against Religious Assessments* ¶5 in II *The Writings of James Madison* 183, 187 (G. Hunt ed. 1910).

[4]The facts stated herein repeat, in principal part, those contained in the detailed statement of the case and supporting references of the petition. Amici will therefore confine their supporting citations to those items or statements not specifically reflected or documented in the petition.

lic charitable trusts having no proprietary interest in their funds, assets or property, since these are all held in trust for the benefit of the *general public*;[5] church assets are therefore public assets and church records are public records,[6] and in these matters there are no private interests and consequently no private rights;[7] church officers and leaders are trustees, serving at sufferance and replaceable at the State's pleasure;[8] churches are obligated to account to the State for the assets they hold (including the contributions of members) on an ongoing basis;[9] the State is empowered to oversee and supervise all churches in the management of their assets and, in this connection, to examine, audit and control all activities touching church property and finances.[10]

In short, the State of California contends that while individuals may believe what they wish, when they organize

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[5]Second Amended Complaint ¶10, App. at 15-16, and transcript of hearing to confirm receiver's appointment (12 January 1979) at 361, App. at 34-35. Unless otherwise noted, all hearings and documents relate to *People of the State of California v. Worldwide Church of God, Inc., et al.*, Case No. C 267607 (Superior Court of the State of California for the County of Los Angeles).

[6]Second Amended Complaint ¶10, App. at 15-16, and transcript of ex parte hearing to appoint a receiver (2 January 1979) at 7, App. at 42.

[7]Transcript of ex parte hearing to appoint a receiver (2 January 1979) at 3, App. at 38-39.

[8]Second Amended Complaint ¶10, App. at 15-16, State's Opposition to Demurrer to First Amended Complaint at 19-20, 21, App. at 2, transcript of hearing to confirm receiver's appointment (12 January 1979) at 362, App. at 35, and transcript of ex parte hearing to appoint a receiver (2 January 1979) at 3-4, App. at 38-39.

[9]Second Amended Complaint ¶¶11 and 25, App. at 16, 23-24, and transcript of ex parte hearing to appoint a receiver (2 January 1979) at 3, App. at 38-39.

[10]Id.; *see also*, Second Amended Complaint ¶1, App. at 11, and State's Response to Application for Stay of Receivership (undated) at 8, App. at 49-50.

or come together in order to give effect to (i.e., to *exercise*) shared beliefs or take steps to propagate them, such as the collection and disbursement of funds, construction or purchase of buildings or the execution of programs in fulfillment of their mission, they enter upon a *secular* pursuit which the State steps in to oversee and control in order to satisfy itself, *inter alia*, that the assets are being put to uses which *the State* regards as appropriate to the "purposes" of the church.[11] The challenged orders reflect the approval of these principles by California courts.

In accordance with the foregoing theory, California's Attorney General filed the subject action[12] on the relation of some six dissident members of the Worldwide Church of God whose views on matters of applied doctrine and Church priorities differed with those of their brethren and the Church's hierarchy. In the action, the State sought to compel a comprehensive accounting from the Church by means of a court-ordered audit and examination of all Church receipts and expenditures. The ancillary remedies of receivership and injunction were invoked to facilitate this. In addition, the State sought to remove and replace top Church leaders and trustees; to force the Church to abandon its hierarchical polity and embrace a congregational form of governance; to secure disgorgement and restitution and

---

[11]However surprising this may seem, the Attorney General nevertheless claims that the State must determine whether church activities are consonant with a church's stated purposes. To the extent it finds this is not the case, the State must then take appropriate action to correct this "departure." *See*, former Cal. Corp. Code §9505 (West, 1979), App. at 8, cited by the Attorney General as authority for this view.

[12]*People of the State of California v. Worldwide Church of God, Inc. et al.*, Case No. C 267607 (Superior Court of the State of California for the County of Los Angeles, 2 January 1979).

to obtain orders perpetually enjoining certain Church officers from holding *any* office in *any* church.[13]

The State[14] secured, ex parte, the appointment of a receiver who assumed complete control over the Church and exercised this authority for approximately seven weeks. This receivership was eventually suspended by the posting of a stay bond in connection with the Church's appeal.

The Attorney General, prevented from enforcing the examination he sought through the medium of the receivership, then turned to civil discovery as an avenue for accomplishing the same result. He sought and obtained from the court a series of discovery orders directing the Church and its officers to produce virtually every piece of paper generated by any of them during the preceding several years and to

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[13]See generally the Second Amended Complaint, App. at 11-33. The second paragraph of the prayer requested

> an order removing the defendants Rader, Gotoh, Kuhn, Wright, Cornwall and Helge from holding any office or employment in or under [the Worldwide Church of God, Ambassador College, or Ambassador International Cultural Foundation] and cancelling and nullifying any contracts of employment which may have heretofore been entered between them and said entities and further enjoining and restraining said defendants from holding any office of employment under the said . . . entities in the future, or in or under any California charitable corporation trust or charitable organization.

A principal ground cited for this nakedly punitive relief was the resistance these individuals offered to the State's demands, i.e., their assertions of constitutional objections. In other words, the State seeks to punish them for asserting their rights. *See*, Second Amended Complaint ¶¶18-22, App. at 20-21.

[14]The original pleadings were actually conceived and drawn by the relators' private attorney, who was instrumental in the selection of the receiver and the imposition of the receivership. He was "deputized" both by the receiver and by a Deputy Attorney General and, under the canopy of official auspices, acted as lead counsel for the State during the first several weeks of the litigation. Declaration of Hillel Chodos in Support of Motion for Attorneys' Fees (dated 27 February 1979), petition app. 7-1.

explain and justify virtually every transaction reflected therein.

These orders[15] would require, by way of partial example, that petitioners turn over to the State, for its scrutiny:

> (a) All minutes of meetings of the Church's board of trustees during the preceding twenty-two years, including minutes of committee meetings;
>
> (b) All documents evidencing any communication between the Pastor General and any officer, minister or employee of the Church (similar orders are directed to other officers);
>
> (c) Wholesale quantities of financial records reaching back for decades (the Pastor General was ordered to produce, *inter alia*, all church corporate minutes, *since their inception!*);
>
> (d) Records reflecting the source, amount and application of contributions to the Church;[16] and
>
> (e) Records indicating the disposition of funds pursuant to Church programs for welfare and relief of indigent persons including the identities of the recipients of such relief.

The foregoing sampling gives some flavor of the massive sweep of the State's proposed examination as well as the cooperation which these requests have elicited from the trial court.

If this petition for writ of certiorari be denied, the ensuing enforcement of these orders will lay the Church bare to

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[15]Reproduced in full in petition appendices R-W, *see also*, petition appendix X for a list of the documents required by these orders.

[16]While Church membership lists are not specifically so designated, the general demands are broad enough to include, and thus call for, them. *See, e.g.* petition appendix at 77b(¶¶1, 4) and 78b(¶8).

unrestricted public exposure of its private communications and records, not excluding those touching ministerial, doctrinal, penitential and other privileged matters. In its train will ensue, with historic inevitability, the intimidation and coercion, not to say persecution, of the Church's members and its leaders.

The attitude with which petitioners' objections and claims of privilege have been received may be sensed, perhaps, from the observation of one trial court judge from the bench who warned that a contention by the Church that any documents touching financial affairs were ecclesiastical in character would be taken by him as "evidence of bad faith."[17]

A further indication in this vein is furnished by the trial court's order (attacked in the petition) suspending all right of discovery by petitioners until such time as they forbear from pursuing appellate remedies and acquiesce in the challenged directives.

All appeals to higher courts have to date been unavailing, and the petition to this Court is the last remaining barrier to the wholesale invasion of the Church's privacy and sanctity. If the Court acts in response to the petition, petitioners' rights, otherwise irreparably lost, will be preserved, and a first amendment issue of transcending importance will be squarely posed for resolution, namely, the propriety of the challenged orders themselves, and, in turn, the constitutional validity of the underlying doctrinal claim that threatens the independence of this and every other church.

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[17]Statement of the Honorable Julius M. Title, Judge of the Superior Court of the State of California for Los Angeles County in the hearing of 21 February 1979 in the subject case, transcript p. 137, App. at 52.

Question Presented.

Can California's Public Trust Doctrine and its corollary of coerced disclosure be lawfully applied to all California churches and religious organizations compatibly with the first amendment's limitations on laws respecting an establishment of religion or prohibiting its free exercise?

Summary of Argument.

California's Public Trust Doctrine creates a new and frightening relationship between church and state, pursuant to which the state impresses a "public trust" upon all of the means by which religiously held beliefs are exercised and given effect. Its requirement of mandatory disclosure makes public business of private institutional worship and intimidates and inhibits its free exercise. In so doing, it collides head on with the first amendment.

Under the Public Trust Doctrine, the funds and properties of California churches are escheated to public ownership, their leaders made accountable to — and removable by — the State. The Attorney General's Office becomes a bureau for the general inspection and regulation of religion charged with the duty of supervising church activities and correcting "departures" from stated purposes. This results in a forbidden establishment and a chilling, inquisitorial entanglement.

The Public Trust Doctrine is not an ad hoc aberration applied only to petitioners, but a settled, systematically applied policy.

The Public Trust Doctrine responds to no compelling state interest not fully served by less perilous, less radical and more conventional remedies.

The issues presented are fully ripe for decision: the threatened rights will be irreparably invaded and devastated unless the Court acts at this time.

ARGUMENT

I.

California's Public Trust Doctrine as Applied to Churches and Religious Organizations Is Inescapably Repugnant to the Free Exercise of Religion.

The rights expressed in the free exercise and establishment clauses of the first amendment were the first ones dealt with in the Bill of Rights simply because the founders assigned to them transcendent importance. To them "religious freedom was the crux of the struggle for freedom in general."[18] It still is.

As the Court has held, the free *exercise* of religion includes not only the freedom to believe, which by its nature is absolute, but also the freedom to act in accordance with that belief. The latter, while not absolute, may be circumscribed only in response to a compelling interest.[19] Free belief, indeed, means little if one cannot exercise one's belief by joining with others of like mind to assemble in common worship, propagate the shared belief and pool common resources in order to create the facilities and finance the activities that will accomplish these purposes.

No right is more private or more personal than one's religious belief. In Madison's words, "[t]his right is in its nature an unalienable right. It is unalienable; because the

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[18]*Everson v. Board of Education*, 330 U.S. 1, 34, 91 L.Ed. 711, 733, 67 S.Ct. 504 (1947) (dissent of Rutledge, J.). *See also*, James Madison, *Memorial and Remonstrance Against Religious Assessments* ¶15 in II *The Writings of James Madison* 183, 190-91 (G. Hunt ed. 1910): and Brant, *James Madison, The Virginia Revolutionist* 243 (1941): "Madison looked upon . . . religious freedom, to judge from the concentrated attention he gave it, as the fundamental freedom."

[19]*Sherbert v. Verner*, 374 U.S. 398, 403, 10 L.Ed. 2d 965, 969-70, 83 S.Ct. 1790 (1963); *Wisconsin v. Yoder*, 406 U.S. 205, 229-30, 32 L.Ed. 2d 15, 32-33, 92 S.Ct. 1526 (1972); *McDaniel v. Paty*, 435 U.S. 618, 631 n.2, 55 L.Ed.2d 593, 604, n.2, 98 S.Ct. 1322 (1978) (concurrence of Brennan, J.)

opinions of men, depending only on the evidence contemplated by their own minds, cannot follow the dictates of other men: It is unalienable also; because what is here a right towards men, is a duty towards the Creator. It is the duty of every man to render to the Creator such homage, and such only, as he believes to be acceptable to him. This duty is precedent both in order of time and degree of obligation to the claims of Civil Society."[20]

The right is not one conferred by governments, because one's religion, as the founders[21] and the Court[22] have recognized, is a matter beyond the scope of civil power. The State cannot withdraw this right; it can only seek to control and frustrate it, something that is automatically accomplished by public intervention and exposure.

One of the least subtle and most effective ways of controlling, abridging and ultimately destroying the right is to establish state surveillance, control and regulation over the *means* of its exercise. California's Public Trust Doctrine achieves this very efficiently through the deceptive but ingenious device of redefinition, relabeling.

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[20]James Madison, *Memorial and Remonstrance Against Religious Assessments* ¶1 in II *The Writings of James Madison* 183, 184-5 (G. Hunt ed. 1910).

[21]James Madison, private letter, undated, in *IX The Writings of James Madison* 484, 487 (G. Hunt ed. 1910).

[22]*Abington School District v. Schempp*, 374 U.S. 203, 219, 10 L.Ed.2d 844, 856, 83 S.Ct. 1560 (1963) (emphasis added):

> [t]he state cannot forbid, neither can it perform or aid in performing the religious function. *The dual prohibition makes that function altogether private.*

Lemon v. Kurtzman, 403 U.S. 602, 625, 29 L.Ed.2d 745, 763, 91 S.Ct. 2105 (1971):

> The Constitution decrees that religion must be a private matter for the individual, the family, and the institutions of private choice. . . .

By declaring every charitable organization to be a public trust and every church to be a charitable organization, every church becomes, *ipso facto*, a public trust, accountable to the State as guardian of the public interest. The State thus enables itself to strip away the privacy and sanctity essential to free exercise by exposing to public scrutiny, surveillance, regulation and audit the means of exercise, i.e., the institutions, through which the shared beliefs are given effect and the commonly perceived mission is carried out. In the process, an apparatus of control is spawned and fastened into place.

The chilling, inhibitive and ultimately interdictory character of the power thus fashioned is self-evident. The reality of this iron hand is not tempered by the velvet glove of purportedly beneficent purpose, such as the protection of "public" assets or the scourging of miscreants. The teachings of history reinforce this conclusion. As far back as the recorded word reaches, it reflects the attempts of rulers to control the beliefs of men or coerce them into a desired uniformity by extending just such pervasive, ostensibly protective control over the means by which such beliefs are or could be *exercised* whether, as Madison described, by usurpation on the part of the state itself or through a "corrupting coalition or alliance"[23] between the state and an established or favored sect.

The Court has perceptively recognized the intimidating and ultimately inhibitive effect of coerced disclosure on the exercise of First Amendment rights in firmly proscribing state scrutiny of the membership lists of *non*-religious, private organizations. *NAACP v. Alabama*, 357 U.S. 449, 462, 2 L.Ed.2d 1488, 1499-500, 78 S.Ct. 1163 (1958); *Buck-*

[23]James Madison, private letter, undated, in IX *The Writings of James Madison* 484, 487 (G. Hunt ed. 1910).

ley v. Valeo, 424 U.S. 1, 64-66, 46 L.Ed.2d 659, 713-14, 96 S.Ct. 612 (1976).[24]

Neither, by the same token, may the State evade these constitutional restraints by classifying churches as public organizations. The State "cannot make public business of religious worship,"[25] whether personal or institutional. Churches are but the extensions of man's most private and inalienable right. They are private and voluntary organizations in the ultimate sense of those words, and the fact that their membership may be drawn from a significant sector of the public does not alter this fact. Some are large, but many are small. To permit the State, by legal sleight of hand, to transform them into *public* entities subject to the State's scrutiny and regulation inescapably nullifies the very meaning of free exercise, notwithstanding that the State may still purport to allow to the individual his right to hold or contemplate what personal beliefs he will, since he may not freely exercise them.

The immediate issue presented by the petition emphasizes what we have said above. No single device is more evocative of inquisitorial power or susceptible to inquisitorial abuse than the power of coerced disclosure. Theoretical free exercise is of little moment if the private church organizations which give substance and effect to joint belief are subject to surveillance and control, their institutional records and papers may be seized, their leaders may be summoned to

[24]*See also, Gibson v. Florida Investigation Committee*, 372 U.S. 539, 543-45, 556-58, 9 L.Ed.2d 929, 934-35, 941-42, 83 S.Ct. 889 (1963) and *Surinach v. Pesquera de Busquets*, 604 F.2d 73, 77-78 (1st Cir. 1979).

[25]*Lemon v. Kurtzman*, 403 U.S. 602, 633, 29 L.Ed. 2d 745, 767, 91 S.Ct. 2105 (1971) (concurrence of Douglas, J.), *see also, United States v. 564.54 Acres of Land*, ... U.S. ...., 60 L.Ed.2d 435, 444, 99 S.Ct. 1854, 1859-60 (1979).

submit to public interrogation and to justify the manner in which they carry out their religious mission.

The courts have hitherto had few occasions to consider the question of compelled disclosure for the reason that, until recently, it was considered unthinkable. However, the issue has recently been presented in an increasing number of cases, and the federal courts have almost uniformly rejected it. *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 64-68, 46 L.Ed.2d 659, 713-16, 96 S.Ct. 612 (1976); *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 712-14, 49 L.Ed.2d 151, 165-66, 96 S.Ct. 2372 (1976); *Surinach v. Pesquera de Busquets*, 604 F.2d 73, 78-80 (1st Cir. 1979); *Fernandes v. Limmer*, 465 F.Supp. 493, 504-505 (N.D. Texas 1979)[26]

This is not to say that the state is powerless to control *any* activity undertaken in the name of religion. As the Court observed in *Sherbert v. Verner*, 374 U.S. 398, 403, 10 L.Ed.2d 965, 970, 83 S.Ct. 1790 (1963), the right to act must give way to circumstances of compelling interest, as in the case of conduct that "pose[s] some substantial threat to public safety, peace or order." Manifestly, individual criminal conduct may be prosecuted and punished as such regardless of the fact that it may have been religiously inspired,[27] as we discuss more fully in Section IV below.

This is quite different, however, from the institutionalized state intrusion into the affairs of religious organizations and

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[26]Decisions considering restrictions imposed on coerced disclosure by the establishment clause will be discussed in the next section and include *Lemon v. Kurtzman*, 403 U.S. 602, 619, 29 L.Ed.2d 745, 759-60, 91 S.Ct. 2105 (1971); *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 502-504, 59 L.Ed.2d 533, 542, 99 S.Ct. 1313 (1979); and *McCormick v. Hirsch*, 460 F.Supp. 1337, 1357-58 (M.D. Pa. 1978).

[27]*Davis v. Beason*, 133 U.S. 333, 341-42, 33 L.Ed. 637, 639-40, 10 S.Ct. 299 (1890).

the systematic surveillance and supervision of their affairs that is mandated by California's Public Trust Doctrine. This latter, amici submit, is organically hostile to free exercise.

II.

California's "Public Trust" Doctrine by Its Very Terms Constitutes an Establishment of Religion, and the Means by Which Its Effectuation Is Sought Creates an Institutionalized Entanglement by the State in Church Affairs.

What we have said with respect to free exercise applies with equal force to the first amendment's mandate against an establishment of religion.

If the common law transforms every California church into a public trust with the State as the ultimate trustee for the beneficiary public, then the State is the *ultimate* establishment.

If all California church property is public property and all church records are public records, then the State of California is the equal of England's sovereign, who, in addition to being the supreme civil authority, was also "the supreme head in earth of the Church of England, and . . . [had] . . . all jurisdictions, authorities and commodities to the dignity of the supreme head of the church appertaining."[28]

If, as contended by California's Attorney General, leaders of California churches are mere trustees serving at sufferance, who may be removed by a court at will, it is the State which actually wears the bishop's mitre, and separation becomes a mockery.

If all California churches and religious organizations are obliged to account to the State, and the State, on the other hand, is authorized and empowered to examine their affairs

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[28]I Blackstone's Commentaries 279 (Lewis Ed.).

at will, to supervise the management of their property and assets and to regulate their activities, an institutionalized entanglement of the one in the other's affairs is inescapable.

If the State, whether through the Attorney General or a court, is empowered to decide for itself what is or is not ecclesiastical and to determine finally whether the manner in which a church performs its religious mission is in conformity with "the general purposes for which it is formed,"[29] that entanglement is exalted to a doctrinal level, and the very inquiry which the Court has characterized as "impermissible"[30] becomes sanctified.

Amici urge that the mere recital of the foregoing corollaries, which flow inevitably from the Public Trust Doctrine and have found enforced application in the subject case, demonstrates the repugnance of this Doctrine, which is the supporting premise of the action, to the establishment clause.

Without here attempting exhaustively to brief or discuss the merits of the issue, amici draw the Court's attention to certain of its own recent holdings on the issue and those of courts which have followed them. *See, Lemon v. Kurtzman*, 403 U.S. 602, 619, 29 L.Ed.2d 745, 759, 91 S.Ct. 2105 (1971); *New York v. Cathedral Academy*, 434 U.S. 125, 132-33, 54 L.Ed.2d 346, 353-54, 98 S.Ct. 340 (1977); *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 502, 59 L.Ed.2d 533, 542, 99 S.Ct. 1313 (1979); *Surinach v. Pesquera de Busquets*, 604 F.2d 73, 78 (1st Cir. 1979); *McCormick v. Hirsch*, 460 F.Supp. 1337, 1357-58 (M.D. Pa. 1978).

One of the specific evils forseen by Madison, against which the establishment clause was designed to protect,

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[29]Cf. former Cal. Corp. Code §9505 (West, 1979).

[30]*NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 502, 59 L.Ed.2d 533, 542, 99 S.Ct. 1313 (1979).

was the possibility of "a corrupting coalition or alliance"[31] between the State on the one hand and a favored religious group on the other. The subject action had its genesis in just such an alliance, for it was private dissidents within the defendant Church who made common cause with the State as their champion, and it was the private attorney for this group who conceived the action, drafted its pleadings, assumed tactical control and, wrapped in the mantle of public authority, carried the laboring oar.[32] Quite aside from the general impropriety of the State's committing its name and resources to a role in support of parties in a private dispute,[33] the State has here placed itself in the bizarre position of imposing the views of a tiny handful of dissidents upon the entire Church membership of over seventy thousand.

If the Church is, indeed, the ward of court and State, as California's Attorney General has urged, the historic priority so memorably articulated by Madison, that man's right and duty towards his Creator is "precedent both in order of time and degree of obligation to the claims of the Civil Society"[34] would be reversed and thus obliterated.

Amici believe that the Court cannot and would not countenance such a result.

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[31]James Madison, private letter, undated, in IX *The Writings of James Madison* 484, 487 (G. Hunt ed. 1910).

[32]See n.14.

[33]*Kansas v. United States*, 204 U.S 331, 340-41, 51 L.Ed. 510, 512-13, 27 S.Ct. 388 (1907); *Oklahoma v. Atchison, T. & S.F.R. Co.*, 220 U.S. 277, 288-89, 55 L.Ed. 465, 468-69, 31 S.Ct. 434 (1911); *People v. Pacheco*, 29 Cal. 210, 213 (1865); *People v. Brophy*, 49 Cal.App.2d 15, 34-36, 120 P.2d 946 (1942); *People of the State of New York v. Ingersoll*, 58 N.Y. 1, 13-17 (1874).

[34]James Madison, *Memorial and Remonstrance Against Religious Assessments* ¶11 in II *The Writings of James Madison* 183, 184-5 (G. Hunt ed. 1910).

III.

The Subject Case Is Not an Isolated One. It Reflects a Program of Systematic Supervision and Examination of Churches by California's Attorney General.

The subject case is not an isolated one, and the Public Trust Doctrine enunciated therein by the Attorney General is not an ad hoc affair, but a statement of settled policy. The subject case simply represents the most ambitious and unabashed application of this policy to date.

In other cases, the same principles are being urged upon the California courts and similar relief sought by the Attorney General. See, for example, *Younger v. Faith Center, Inc.*, Case No. C254329 (Superior Court of the State of California for the County of Los Angeles; Appeal pending in California Court of Appeal for the Second Appellate District, 2d Civil No. 56574).

In a letter to California State Assemblyman William H. Ivers, dated 31 January 1979,[35] the Attorney General stated:

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[35]App. at 53-55. In the same letter, the Attorney General once again sets forth his "Public Trust Doctrine" as follows:

> In the eyes of the law, each [non-profit corporation affilliated with the Worldwide Church of God] is deemed to be a charitable organization, holding its assets in trust for the public good.
>
> In recognition of the public interest in charities, it has been consistently held by the courts that the state has the duty and obligation to oversee the handling of their assets. . . .
>
> Accountability and proper disposition of charitable assets are required at all times by all charitable organization. . . .
>
> . . . .
>
> [T]he law imposes an affirmative duty on this office to require trustees of religious organizations to be accountable for all funds and other assets . . . .

In a similar letter dated 21 June 1979 (App. at 56-58), addressed to Oakland attorney Ralph L. Baker, a member of the Advisory Committee of Alliance for the Preservation of Religious Liberty, this theme is stated again, with variations:

> In your letter you express concern over actions taken by the Attorney General's office against the Worldwide Church of God and Faith Center Church. Under the law, each is deemed to be a charitable organization, holding its assets in trust for the public good.

> There are, of course, other cases in which this office has involved itself in the supervision of assets held by religious corporations many of which were resolved short of trial and appeal.

And in an Associated Press article appearing on 20 September 1979, in the Pasadena Star-News,[36] Chief Deputy Attorney General Michael Franchetti was quoted as saying that "the Attorney General's office has been auditing [churches] and conducting investigations for years with no complaints."

Thus the subject case is merely the tip of the iceberg. This raises a number of rather chilling questions:

1. How many churches have been brought under the "supervision" of California's Attorney General?

2. What criteria does the Attorney General apply in determining which churches shall be the beneficiaries of his scrutiny?

3. What State-imposed standards does the Attorney General apply in supervising management of church assets to determine whether they are being used for proper religious purposes?

4. How many religious organizations have yielded to state intrusion because they lack the capacity, resources or will to resist?

These amici curiae are also concerned that many religious organizations may not prove strong enough to turn back

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> The statutes and court decisions clearly impose a duty upon the Attorney General's office to ensure that funds and assets of charitable organizations are used for the purposes in the Articles of Incorporation.
>
> Accountability and proper dispositon of charitable assets are required at all times by all charitable organizations.

[36]App. at 62-63.

official demands by the state and certainly not sturdy enough to withstand a sustained assault such as that being mounted against the Worldwide Church of God. The ominous reference by the Attorney General to "other cases . . . many of which have been resolved short of trial or appeal" raises the spectre of systematic and successful state coercion, leading ultimately to state-established standards of religious observance and practice.

IV.

No Compelling State Interest Has Been Cited, or Could Be Cited, by the Attorney General to Justify the Powers Claimed or the Orders Issued in the Subject Case.

As the Court has repeatedly emphasized, e.g., in *Everson v. Board of Education, supra*, and *Sherbert v. Verner, supra*, the freedom to believe is absolute, and its inseparable counterpart, the freedom to act, can be abridged only by the most compelling state interest. Mr. Justice Rutledge stated that the first amendment mandate "secures all forms of religious expression, creedal, sectarian or nonsectarian, wherever and however taking place, except conduct which trenches upon the like freedoms of others or clearly and presently endangers the community's good order and security." *Everson v. Board of Education*, 330 U.S. 1, 32, 91 L.Ed. 711, 732, 67 S.Ct. 504 (1946) (dissent of Rutledge, J.).

The "compelling interest" cited by the Attorney General of California to justify the power he wields pursuant to the Public Trust Doctrine is alleged to be the prevention of fraud and the protection of churches against the diversion of their assets to private or personal benefit.

Preliminarily, these amici note that this assertion rests upon the untenable ground, earlier discussed, that churches

are public trusts, publicly owned and subject to public oversight. They are not, however, as we have seen. They are private organizations, and their officers, directors and members are fully capable of detecting wrongdoing and pursuing its redress by whatever avenues they judge to be most effective, including recourse to the courts.[37]

Secondly, amici observe that if conduct brought to the attention of the Attorney General is criminal in character, i.e., in the nature of a *public* offense, the public interest is fully and adequately secured by the prosecution of the accused individuals pursuant to appropriate criminal statutes. *Intern. Soc. for Krishna Consciousness v. Bowen*, 600 F.2d 667, 669 (7th Cir. 1979); *see also, Cantwell v. Connecticut*, 310 U.S. 296, 306, 84 L.Ed. 1213, 1219, 60 S.Ct. 900 (1940).

These amici further observe that the charges specified by the Attorney General in his complaint are, in substance, criminal: i.e., theft and embezzlement.[38] To the extent that

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[37]Cal. Corp. Code §9501 (1979, West); Cal. Corp. Code §§9140-42 (1980, West); *see also, Watson v. Jones*, 80 U.S. (13 Wall.) 679, 20 L.Ed. 666 (1872), *Presbyterian Church v. Hull Church*, 393 U.S. 440, 21 L.Ed.2d 658, 89 S.Ct. 601 (1969), and *Jones v. Wolf*, ... U.S. .... , 61 L.Ed.2d 775, 99 S.Ct. 3020 (1979), illustrating the manner in which private litigants may enforce church rights, *but cf., Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94, 97 L.Ed. 120, 73 S.Ct. 143 (1952) and *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 49 L.Ed.2d 151, 96 S.Ct. 2372 (1976), illustrating the limits on such recourse.

[38]These amici take no position with respect to the merits of the charges contained in the Attorney General's complaint and articulated in his other pleadings, nor do they suggest or urge that religious freedom may be utilized as a protective cloak for criminal activity. They note, however, the observation of one writer on this case that "in all of [the Attorney General's] activity, and after months had passed, only one thing was missing — a single misdeed by a church official or employee had yet to be proven in a court of law." Worthing, "The State Takes Over a Church," Annals Amer. Acad. Pol. & Soc. Sci., 446:136, 137 (November 1979). *See also* Wiley, "A Constitutional Outrage," Lib-

(footnote continued on following page)

criminal conduct is charged, the state possesses an arsenal of tools, in a proper criminal context, to investigate, adduce evidence and, if justified, prosecute. To the extent that investigation yields insufficient evidence to pursue prosecution, no public interest, compelling or otherwise, is demonstrated.[39]

The relief sought by the Attorney General in the subject case, i.e., receivership, injunction, removal and banishment from office, organizational restructuring, disgorgement and restitution, et cetera, is all relief which is essentially *private* in nature, any right to which inheres to the *Church*, but not to the State, and which could be pursued by the Church upon the initiative of any of its trustees or officers or, derivatively, at the suit of its members. For the State to thrust itself into the position of preempting the rights of these private individuals and entities to determine for themselves what, if any, injury has been inflicted and what, if any, remedies to pursue, is not only unwarranted, but impermissible, and it certainly responds to no compelling public interest.[40]

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erty Magazine, 74(3):2, 7 (May/June 1979). Nonetheless, they are gravely concerned with assuring that any charges of criminal conduct or wrongdoing be pursued in a proper manner in accordance with authorized procedures fully attended by appropriate constitutional safeguards. Substantially less appears to have been accorded in the subject case, and these amici suggest that the novel and dangerous form of action devised by the Attorney General will, unchecked, only produce further activity of like kind.

[39]The Church leaders against whom the principal charges are levelled have publicly demanded that the Attorney General indict and prosecute them individually, if he possesses evidence to support the charges, rather than attacking the Church. Public statement of Stanley Rader, Treasurer and Director of the Worldwide Church of God, Inc., made 22 January 1979 and telecast in a presentation aired 16 January 1980 on KCOP, Los Angeles; *see*, excerpt Final Script, "The First Amendment: Church Versus State," at 19, App. at 69.

[40]*Kansas v. United States*, 204 U.S. 331, 340-41, 51 L.Ed. 510, 512-13, 27 S.Ct. 388 (1907); *Oklahoma v. Atchison, T. & S.F.R. Co.*,

(footnote continued on following page)

Lastly, amici question the value to the Church and its congregants of this uninvited "protection" which has blackened their names, desecrated their central sanctuary, devastated Church programs and demonstrably caused monetary damage in the millions. Historically, just such "protection" has too often been the cover and pretext for the infliction of bloody repression and persecution.

Once again, without assuming fully to develop the issue at this point, amici believe the foregoing not only demonstrates the absence of any compelling state interest to justify the draconian invasion perpetrated by California's Attorney General, but represents the actual realization of the very danger apprehended by the founders, namely the state's usurpation of that fundamental right of decision which belongs to the individual and the consequent nullification of the religious freedom mandated *jointly* by the free exercise and establishment clauses of the first amendment.

V.

The Issues Tendered Are Fully Ripe for Decision. Unless the Court Acts, the Threatened Rights Will Be Irreparably Lost.

The enforcement of the challenged orders would result in the irreparable loss of the first amendment rights which petitioners have struggled to protect. Indeed, by virtue of their intentionally overlapping character, enforcement as against only one party would compromise the rights of all.

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220 U.S. 277, 288-89, 55 L.Ed. 465, 468-69, 31 S.Ct. 434 (1911); Cal. Code Civ. Proc. §§337, 339; Cal. Civ. Code §3369; *People v. Pacheco*, 29 Cal. 210, 213 (1865); *People v. County Judge*, 40 Cal. 479, 480 (1871); *People v. Brophy*, 49 Cal.App.2d 15, 34-36, 120 P.2d 946 (1942); *People of the State of New York v. Ingersoll*, 58 N.Y. 1,13-17 (1874).

That they will be enforced, the California trial courts have made very clear, and petitioners' exhaustive attempts to secure relief in the appellate courts have fallen upon deaf ears. The very denials of appellate assistance are cited by the Attorney General as affirmative approval of his activities as California's inspector general of religion and his grotesque crusade against the Worldwide Church of God.[41]

The Court, then, is the last barrier to this ultimate invasion of first amendment sanctity. If it declines to hear the matter, this barrier will be sundered — and the "impenetrable wall" between church and state along with it.

These amici urge that such a consequence is unthinkable.

Conclusion

In a letter to the California Supreme Court, dated 3 July 1979, special counsel for the National Council of Churches observed that the subject action by California's Attorney General constituted "the most sustained and destructive assault upon religion" which that organization had yet witnessed.[42] These amici share this conclusion and urge that the Court would, upon examination, surely agree. They also, however, see that what is taking place in California is but a repetition of what has gone before, again and again. To generations which have grown up within the protective

[41]The Attorney General has previously suggested that denials of petitions for a writ of certiorari constitute the Court's approval. Supplemental Memorandum of Points and Authorities in Opposition to Motion for Injunction Pending Appeal at 1-2, dated 16 November 1979 and filed by the Attorney General in *Worldwide Church of God, Inc. v. State of California*, Case No. CV 79-0183 LEW (TX) (United States District Court, Central District of California); App. at 70; Notice of Motion and Motion for Order Holding Specified Defendants in Contempt of Discovery Orders of this Court and for Sanctions; Memorandum of Points and Authorities and Declaration of Lauren R. Brainard in Support Thereof, at 7 and 12-13, dated 8 February 1980 and filed in the subject case; App. at 71-72.

[42]Letter of Rosen, Remcho & Henderson at 2, App. at 73-75.

embrace of the Federal Constitution and its first great amendment, this spectacle might seem novel, but the long light of history reveals it to be merely another chapter in the endless effort of the State to subjugate and dominate men's beliefs.

In an age which has witnessed increasing government intrusion into every corner of private and personal activity, an age which, indeed, bears increasing resemblance to those which preceded the adoption of the Constitution and whose excesses gave rise to its historic strictures, it is not, perhaps, surprising that this floodtide of pervasive government should now threaten to engulf the instrumentalities of the fundamental freedom, religion itself. Only the Court can stem the advance. Otherwise, as Georges Santayana said of those who ignore the lessons of history, we shall be condemned to repeat these lessons.

Madison, in his historic "Memorial and Remonstrance," observed that "the free men of America did not wait until usurped power had strengthed itself by exercise and entangled the question in precedents."[43] Nor, amici urge, should the Court.

Respectfully submitted,

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Of Counsel

[43]James Madison, *Memorial and Remonstrance Against Religious Assessments* ¶3 in II *The Writings of James Madison* 183, 185 (G. Hunt ed. 1910).

APPENDIX.

STATE'S OPPOSITION TO DEMURRER
TO FIRST AMENDED COMPLAINT
(Dated June 28, 1979)

SUPERIOR COURT
OF THE STATE OF CALIFORNIA
For the County of Los Angeles
Case No. C 267607

The People of the State of California, ex rel., ALVIN EARL TIMMONS et al.,

Plaintiffs,

vs.

Worldwide Church of God, Inc., a California Corporation, et al.,

Defendants.

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[10] . . .

III

THE ATTORNEY GENERAL HAS WELL SETTLED COMMON LAW SUPERVISORY POWER OVER CHARITIES AND THE POWERS CONFERRED BY CORPORATIONS CODE SECTION 9505 ARE MERELY IN ADDITION THERETO

A. *The Attorney General Has Extensive Common Law Supervisory Powers Over Charities*

The Attorney General has well settled common law supervisory power over charities, and the powers conferred by Corporation Code Section 9505 are merely in addition thereto.

The Attorney General has clear common law supervisory powers over charities.

State's Opposition to Demurrer to First Amended Complaint

[19] . . .

The state seeks to remove individual defendants . . . who may be found to have committed fraud, from holding any office or employment in any of the subject . . . corporations, under the well-settled [20] equitable principal that the court may remove trustees who are guilty of breaching their trust. . . .

[21] . . .

Thus, this court has the equitable jurisdiction to remove charitable officers and directors in the same manner as charitable trustees, and that jurisdiction is derived from trust law principles rather than the Corporations Code.

EXCERPT FROM A HEARING ON SEVERAL PRELIMINARY MOTIONS

Reporters' Daily Transcript
Wednesday, January 10, 1979

* * * *

[7] . . .

Mr. Chodos: Because of the nature of the church, as a charitable trust, the relationship of the court to the church is unique.

Every other party who comes before the court has some claim to its own property, and has some right to resist intervention by the court. But *for 700 years, Your Honor, it has been the law in England and America* [8] *that charitable funds are public funds. They are perpetually in the custody of the court. The court is the ultimate custodian of all church funds, just as the Attorney General has always been charged with the power and the duty to investigate allegations of misuse or even suspicions of misuse.*

STATE'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

(Undated, Filed in October Term, 1978)

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1978
No. 78-1720

Worldwide Church of God, Inc., et al.,

Petitioners,

vs.

The State of California,

Respondent.

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[16] . . . .

II

Pursuant to Ancient and Settled Legal Principles Religious Organizations Hold Their Assets in Trust for Their Religious Purposes Which Are Also Charitable Purposes, and the State Attorneys General Are Charged With The Responsibility of Enforcing and Supervising Charitable Trusts

The courts of California have always held without exception that the secular affairs of church corporations are subject to supervision by the Attorney General and the courts. (*In re Metropolitan Baptist Church of Richmond, Inc.* (1975) 48 Cal.App.3d 850; *Wheelock v. First Presbyterian Church* (1897) 119 Cal. 477.) In general throughout the United States religious purposes are regarded as charitable and trusts for religious purposes are enforced as charitable trusts. (See IV Scott on Trusts (3d ed.) § 371, p. 2880.)

The state attorneys general are charged with such duties of enforcement and supervision because the fulfillment of the purposes of charitable, including religious, organizations is thought to be of general benefit to society as a whole. In that sense, such entities are trustees of their assets for public benefit and hold such assets in trust for the religious or charitable purposes set forth in their governing documents. (*Pacific Home v. County of Los Angeles* (1951) 41 Cal.2d [17] 844, at 851-852; *In re Metropolitan Baptist Church of Richmond, Inc., supra*, at 857.) Any diversion of such funds is a breach of trust. (*In re Metropolitan Baptist Church of Richmond, supra*, at 857; *Holt v. College of Osteopathic Physicians & Surgeons* (1964) 61 Cal.2d 750, at 759-760.) In California and in many other states the attorney general is the only party other than corporate directors or trustees (who in this case are the very persons accused of wrongdoing) who has standing to enforce a charitable trust. (*Holt v. College of Osteopathic Physicians & Surgeons, supra*, at 755-757; IV Scott on Trusts (3d ed.) § 391, p. 3006.) While the public as a whole is the beneficiary of all charitable trusts, members of the public (including in this case members of the Worldwide Church of God) have no clear authority to bring court actions to enforce a charitable trust. . . .

[19] . . . .

The supervision of charity by state attorneys general goes back far longer than even 200 years. The attorneys general and chancery courts of England had such supervisory powers prior even to the enactment of the English Statute of Charitable Uses in 1601. (Stats. 43 Elizabeth I, c. 4; IV Scott on Trusts (3d ed.) § 368.1, p. 2858, § 391, p. 3002.)

DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR JUDGMENT ON THE PLEADINGS AND PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT; REQUEST TO TAKE JUDICIAL NOTICE

(Dated 20 August 1979)

SUPERIOR COURT
OF THE STATE OF CALIFORNIA
For the County of Los Angeles
Case No. C 276 767

FRED G. LOPEZ, et al.,

Plaintiffs,

vs.

The State of California, et al.,

Defendants.

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[4] . . .

Corporations Code section 9505 is not a codification of all of the Attorney General's investigatory and supervisory powers with regard to all charitable religious organizations; section 9505 is in the Corporations Code and hence it deals only with nonprofit corporations. This is not to say, however, that plaintiffs' hypothetical unincorporated religious organization, or a corporation sole, would be subject to any lesser degree of scrutiny under the law than religious nonprofit corporations. In fact, of course, such an unincorporated religious organization and a corporation sole are subject to the Attorney General's common law powers of [5] investigation and supervision over their secular affairs. In addition, the corporation sole is subject to state inquiry into its secular financial affairs via Corporations Code section 10009. There is no reason to believe that a court, upon

application of the Attorney General, could or would probe any less deeply into the secular financial affairs of a corporation sole or an unincorporated religious organization than can the Attorney General under Corporations Code section 9505.

DATED: August 20, 1979

GEORGE DEUKMEJIAN,
Attorney General
JAMES M. CORDI,
LAUREN R. BRAINARD,
WILLIAM S. ABBEY,
Deputy Attorneys General

By /s/ WILLIAM S. ABBEY
Deputy Attorney General

Attorneys for Defendants
George Deukmejian, Evelle J. Younger, Lawrence R. Tapper and the State of California

Cal. Corp. Code § 9505 (1979)

§9505. *Supervision of Attorney General Where Property Held in Trust.*—A non-profit corporation which holds property subject to any public or charitable trust is subject at all times to examination by the Attorney General, on behalf of the State, to ascertain the condition of its affairs and to what extent, if at all, it may fail to comply with trusts which it has assumed or may depart from the general purposes for which it is formed. In case of any such failure or departure the Attorney General shall institute, in the name of the State, the proceedings necessary to correct the noncompliance or departure. Leg.H. 1947 ch. 1038.

Cal. Nonprofit Relig. Corp. Law § 9230 (1980) (effective Jan. 1, 1980)

§ 9230. Purposes: Protection of membership lists: Actions (a) Upon reasonable grounds to believe that the following condition or conditions have occurred or do exist, the Attorney General may, at reasonable times, examine a corporation to determine whether:

(1) The corporation fails to qualify as a religious corporation under this part; or

(2) There is or has been any fraudulent activity in connection with the corporation's property; or

(3) Any corporate property is or has been improperly diverted for the personal benefit of any person; or

(4) Property solicited and received from the general public, based on a representation that it would be used for a limited purpose other than general support of the corporation's religious activities, has been improperly used in a manner inconsistent with the stated purpose for which the property was solicited; or

(5) There has been a substantial diversion of corporate assets from stated corporate purposes.

(b) Such examination shall respect privileges enumerated in Division 8 (commencing with Section 900) of the Evidence Code and shall protect the confidential nature of membership lists by using such lists only in connection with the examination and any subsequent court proceeding. In addition, such examination shall not unnecessarily interfere with normal operations and religious observances of the corporation.

(c) The Attorney General may institute an action in the name of the state to enforce the right of examination set forth in subdivision (a).

(d) For reasonable cause, the Attorney General may institute an action in the name of the state:

(1) To establish that the corporation fails to qualify as a religious corporation under this part, and if a court so finds it shall enter an order that the corporation shall no longer operate as a religious corporation under this part.

(2) To correct any wrongful activity which has taken place in connection with or as a result of any condition or conditions set forth in paragraph (2), (3), (4) or (5) of subdivision (a).

Second Amended Complaint (Filed July 30, 1979)

SUPERIOR COURT
OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

No. C 267-607

[TITLE OMITTED]

AS A FIRST CAUSE OF ACTION FOR ACCOUNTING, PLAINTIFF ALLEGES:

1. George Deukmejian is the duly constituted Attorney General of the State of California, and as such is charged with the supervision of all charitable organizations within this state and with the supervision of trustees and fiduciaries who hold or control property in trust for charitable and eleemosynary purposes. This action was originally brought by and on behalf of the People of the State of California on the relation of individuals who had been granted leave to sue by the Attorney General. Its purpose is to correct the abuse of charitable trusts. The six individually designated relators have since withdrawn, and sole responsibility for the action now rests with the Attorney General.

2. Defendant Worldwide Church of God, Inc. (hereinafter the Church) is a California corporation created and existing under the California general nonprofit corporation law. Its principal place of business is in the County of Los Angeles, California. The Church was organized exclusively for charitable and religious purposes, and all of its assets are dedicated irrevocably to those purposes

such as are set forth in its articles of incorporation a copy of which is attached hereto and incorporated herein as Exhibit 1. At all times since its incorporation in 1934 it has been exempted from taxation by the State of California under Revenue and Taxation Code Section 23701(d), and what is now Article XIII, section 4(b) of the California Constitution.

3. Defendant Ambassador College, Inc. (hereinafter the College), is a California corporation created and existing under the California general nonprofit corporation law. Its principal place of business is in the County of Los Angeles, California. The College was organized exclusively for educational (charitable) purposes, and all of its assets are dedicated irrevocably to those purposes such as are set forth in its articles of incorporation, a copy of which is attached hereto and incorporated herein as Exhibit 2. At all times since its incorporation in April 1951 it has been exempted from taxation by the State of California under Revenue and Taxation Code section 23701(d), and what is now Article XIII, section 4(b) of the California Constitution.

4. Defendant Ambassador International Cultural Foundation, Inc. (hereinafter Foundation), is a California corporation created and existing under the California general nonprofit corporation law. Its principal place of business is in the County of Los Angeles, California. The Foundation was organized exclusively for cultural (charitable) purposes, and all of its assets are dedicated irrevocably to those purposes, such as are set forth in its articles of incorporation, a copy of which is attached hereto and

incorporated herein as Exhibit 3. At all times since its incorporation in March 1975 the Foundation has been exempted from taxation by the State of California under Revenue and Taxation Code section 23701(d), and what is now Article XIII, section 4(b) of the California Constitution.

5. By reason of the exemption from tax of the property of the Church and the College and the Foundation, as above alleged; and also by reason of the fact that all donations and contributions to the Church, the College and the Foundation have been deductible from income by the donors and contributors for purposes of computing their federal and state income taxes; plaintiff is informed and believes, and therefore alleges, that the Church, the College and the Foundation have enjoyed substantial public subsidies amounting over the last ten years to more than $150,000,000.

6. Defendants Stanley R. Rader, Herbert W. Armstrong, Ralph Helge, Henry Cornwall, Osamu Gotoh, Robert Kuhn, Raymond L. Wright, and Does 1 through 50 are and at all relevant times have been either officers, directors, or full-time employees of one or more of the above-named charitable entities (hereinafter referred to collectively as the Church, the College and the Foundation) or one or more of the following named for-profit defendants, or both. All of the acts herein complained of have been done with their knowledge and complicity, and under their supervision. In addition, each individual defendant is legally responsible for the act and omissions of his co-trustees.

7. Plaintiff is informed and believes, and on that basis alleges, that defendants Worldwide Advertising, Inc. and Gateway Publishing, Inc. are California corporations; that Does 51 through 100 are corporations, partnerships or other business entities; that Environmental Plastics, Inc. is a Texas corporation qualified to do business in California; that Rader, Cornwall, Kessler and Palazzo is an accounting firm formed either as a California professional corporation or a partnership; that Mid-Atlantic Leasing is a corporation or partnership; that Excelsior Leasing is a Pennsylvania corporation qualified to do business in California; that the above are hereinafter referred to collectively as the for-profit defendants. Plaintiff is informed and believes, and on that basis alleges, that each of the for-profit defendants is owned or controlled by one or more of the officers or directors of the Church, the College or the Foundation, including particularly the defendant Stanley R. Rader; that funds and property contributed to the charitable entities are freely transferred among them and the for-profit defendants; that financial and business records of the charitable entities have been and continue to be in the custody and possession of the for-profit defendants; and that the unity of record ownership and actual control among the charitable entities and the for-profit defendants, and the course of dealing between them, has been for many years and is now such that for all purposes of this accounting, it would be unjust and inequitable to recognize any separate existence among them at all. The exact status and constitution of the for-profit defendants, and their precise relationship with the charitable entities, are matters not known to plaintiff at this time, but are peculiarly within the knowledge of the defendants; and plaintiff will ask leave of the

Court to amend this Complaint to show their true status and constitution, and the exact nature of their relations with the charitable entities when the same have been ascertained.

8. The true names and capacities of defendants Doe (whether individual, corporate, associate or otherwise) and the true nature of their relationship with the other defendants, is presently unknown to the plaintiff, but is peculiarly within the knowledge of the individual named defendants. Plaintiff will ask leave of the Court to amend this complaint to show the true names and capacities of the defendants Doe, and the true name of their relationship, when the same have been ascertained.

9. Defendants Herbert W. Armstrong and Stanley R. Rader are and all times pertinent to this Complaint have been in full and complete control of the Church, the College, the Foundation, and all of their affairs. Herbert W. Armstrong is and has been Pastor General of the Church ever since its formation, and has been an officer and director of the College and Foundation as well as the Church at all times since their formation. Defendant Stanley R. Rader has acted as general counsel and chief financial adviser of the three entities for the past fifteen years, and for the past four years has acted and is presently acting in at least the following capacities: as director, executive vice-president, executive director, vice-president for financial affairs, secretary-treasurer and general counsel.

10. The Church, the College and the Foundation, as well as the individual named defendants (including Does 1-50), hold and are responsible for the assets of the three char-

itable entities, as trustees, subject to supervision by the Attorney General and ultimately by this court. The ultimate beneficiary in each instance is the public which benefits generally from all charitable endeavors. None of the defendants has or may legally have any proprietary interest in the assets and properties of the Church, the College or the Foundation, nor in their books and records.

11. The Church, the College, the Foundation and the individual named defendants as their officers and directors are required by law to account to the public and this court for all funds received, expended, or held by the three entities. Notwithstanding this duty to account, and repeated requests by plaintiff and members of the Church, these defendants have failed and refused, and still fail and refuse, to make any such accounting at all.

12. The need for an accounting by defendants in this case is particularly acute for each of the following reasons:

(a) Plaintiff is informed and believes, and on that basis alleges, that for a period exceeding ten years the individual and for-profit defendants (including Does 1-100), acting in concert with and under the direction of defendants Armstrong and Rader, have been and are siphoning off and diverting to their own use and benefit assets and properties of the Church, the College and the Foundation, on a massive scale increasing in the last several years to millions of dollars per year, and causing substantial fiscal deficits in their operation.

(b) Although much of the funding for the Church, the College and the Foundation is generated through contributions and other payments and tax subsidies

provided by the public as a whole, a major source of funds for the Church has come from tithing of its members. As Pastor General of the Worldwide Church of God, and as the self-proclaimed Ambassador of God on earth, Herbert W. Armstrong has directed all members of the Church to contribute the first ten percent (10%) of their gross income. Failure to do so, according to Armstrong's published disseminations to the members, is ". . . STEALING from GOD . . . and is SIN, which will cost you your SALVATION!" By reason of such representations and exhortations, a special fiduciary relationship has been created in which Mr. Armstrong, Mr. Rader and the other individual defendants owe the highest duty of accountability, not merely to the general public which is interested in preventing fraud, but also the members and former members who have not only given their money but have also placed their trust in the defendants to use it strictly for God's Work.

(c) In the solicitation of funds, defendant Armstrong has not always been candid. From time to time throughout the past ten years the Church has sent out special and urgent requests for contributions to be made at great personal sacrifices to the donors. Attached hereto and incorporated herein as Exhibit 4 is one such request dated March 30, 1970. The letter speaks of a "tight money situation" requiring cutbacks in Church salaries, publications and operating expenses in all departments of the Work"; it states that "God's Work" needs "IMMEDIATE CASH"; and on the suggestion of ". . . Mr. Rader, our legal counsel and financial adviser," members are asked to borrow whatever they can, so long as they do not lower the

income for the "Work" through the rest of the year. The true nature of the alleged fiscal emergency is exemplified by two purchase orders attached hereto and incorporated herein as Exhibit 5. Mr. Armstrong's letter of March 30, 1970, failed to disclose, among other pertinent facts, the purchase for his Pasadena residence of a $6,090.00 crystal candelabra on January 2, 1970, and French porcelain vases for $2.079.00 on March 31, 1970.

(d) In addition to the first 10% tithe (for God), and a second 10% tithe (to provide for the member's expenses at the annual Festivals), there is a third tithe imposed by the Church on its members consisting of ten percent (10%) of their gross income every third year. Throughout the past ten years this contribution has been expressly solicited as a special fund for widows and orphans. A trust has been imposed on these funds which requires that they be used only for such purposes. Plaintiff is informed and believes and thereupon alleges that an accounting has never been rendered of the receipt and disposition of these funds. and that they have been diverted to purposes other than those for which they were solicited and donated.

13. Because the named individual defendants are now, and at all times pertinent to this action have been in full, effective and exclusive control of all the property, assets, records and administrative facilities of the Church, the College and the Foundation; and because they have consistently denied and still presently deny meaningful access to such records by the Attorney General of the State of California. plaintiff has no alternative but to make many of the allegations of this complaint on information and

belief. Plaintiff will ask leave of the Court to amend this complaint in all pertinent respects when the particular facts concerning the actions complained of have been ascertained.

As a Second Cause of Action for Removal of Individual Defendants as Trustees, and for Injunction, Plaintiff Alleges:

14. Paragraphs 1 through 13 of the First Cause of Action are incorporated by reference into and hereby made a part of this Second Cause of Action.

15. Plaintiff is informed and believes and thereupon alleges that defendant Herbert W. Armstrong is 86 years of age; that he has suffered a heart attack; that he no longer resides in California; and that he is not in daily control of the operations of the Church, the College or the Foundation. The exact nature and extent of his involvement and participation in the diversion of charitable funds hereinabove alleged, either at the present time or in the past, is currently unknown to plaintiff, but is peculiarly within the knowledge of the defendant Armstrong and the other defendants. Plaintiff will ask leave to amend his complaint to show the true facts when the same have been ascertained.

16. Plaintiff is further informed and believes, and thereupon alleges, that for all practical purposes, the financial affairs of the Church, the College and Foundation are now and have for some time been controlled by the defendants Stanley R. Rader, Osamu Gotoh, Ralph J. Helge, Robert Kuhn, Raymond L. Wright, and Henry Cornwall.

17. In addition to his official capacities described above in paragraph 9, Rader has claimed additional power and

authority since January 4, 1979 by reason of a directive purportedly issued on that day by the defendant Armstrong, a copy of which is attached herein and incorporated herein as Exhibit 6.

18. Since this action was filed in January 1979, defendants Rader and Helge have done everything within their power to deny plaintiff access, not only to the books and records of the Church, College and Foundation, but to individuals with knowledge of the operation and financial affairs of said charitable entities.

19. Plaintiff has been endeavoring since January 31, 1979, when this court first so ordered, to examine Rader under oath in deposition concerning his fiduciary relationship to the Church, College and Foundation, and the manner in which he has carried out his responsibilities. Rader failed and refused to appear until further ordered to do so on April 3 and 4, at which time he refused to answer proper questions, and ultimately announced unilaterally that he was leaving the deposition and would not participate any further therein. A copy of the transcript of Rader's deposition is being lodged with this court in connection with plaintiff's Motion to Compel Discovery, and is hereby incorporated by reference and made a part of this complaint.

20. By reason of each and all of their acts and omissions hereinabove related, the defendants Rader, Gotoh, Kuhn, Wright, Cornwall and Helge have failed and refused to comply with the trust which they have assumed; each of them has departed and caused the Church, College and Foundation to depart from the charitable purposes he

and they were bound to serve; and each of said defendants should be removed from all responsibility in connection with the Church, College and Foundation.

21. Further, plaintiff is informed and believes, and therefore alleges that the said defendants have caused the Church, College and Foundation to enter into various purported contracts of employment and other contracts with each of the said trustees, providing for compensation and reimbursement of expenses. Plaintiff alleges that all of said contracts were entered into by the Church, College and Foundation without sufficient consideration and under undue influence, and without proper corporate authority: and alleges that each of said contracts should be cancelled and determined to be null and void. A copy of the Employment Contract of Stanley R. Rader dated July 30, 1976 is attached hereto, marked Exhibit 7, and is incorporated herein by this reference.

22. Plaintiff further alleges that each of the defendants Rader, Gotoh, Kuhn, Wright, Cornwall and Helge should be perpetually enjoined and restrained from serving as officers or directors, or any other capacity, with respect to the Church, College or Foundation or any other California charitable or trust or organization.

As a Third Cause of Action for Orders Requiring Compliance by the Church, College and Foundation With California Law Pertaining to Nonprofit Corporations Organized for Charitable Purposes, or for Other Appropriate Relief, Plaintiff Alleges:

23. Paragraphs 1 through 13 of the First Cause of Action, and paragraphs 15 through 22 of the Second Cause

of Action, are hereby incorporated by reference into and hereby made a part of this Third Cause of Action.

24. By virtue of the facts hereinabove alleged, the defendant charitable entities have claimed the benefits of incorporation as nonprofit corporations organized for charitable purposes under the laws of the State of California which benefits include among others the substantial tax subsidies and exemptions hereinabove referred to; but the said charitable entities have failed in numerous respects to comply their obligations under said laws, as follows:

(a) Claiming that their organization is "hierarchical," the charitable entities have never been subject to the governance of any board of directors, board of trustees or other independent body, authorized and empowered to supervise and preserve charitable funds collected and held by them as required by law;

(b) Notwithstanding that the bylaws adopted by the charitable entities called for a vote of the members on numerous matters of importance, including amendment to the articles and bylaws, disfellowshipment of members and other matters, no member of said charitable entities has ever voted or been permitted or requested to vote on any matter and no vote of the members has ever been held on any subject. In this connection, plaintiff is informed and believes, and thereupon alleges, that although statements were filed with the Secretary of State reflecting a purported vote of the membership on certain amendments to articles of incorporation of the defendant Church, no such vote and no such election was ever held, as the defendants herein are well aware.

(c) The defendants have taken the position that their bylaws may be altered or entirely disregarded whenever it suits their purposes, since said bylaws are "viewed only as guidelines, which are subject to spiritual interpretations (by defendants) and are subordinate to the higher law of God." A copy of the Declaration of defendant Helgè, dated January 11, 1979 and filed with this court on or about January 12, 1979, is attached hereto as Exhibit 8 and is hereby incorporated by reference and made a part of this complaint.

(d) Claiming that all decisions of the defendants Armstrong and Rader are "religious" or "spiritual," including all decisions affecting the disposition of charitable trust funds collected and held by the Church, College and Foundation, defendants have taken the position that all of their financial decisions and expenditures, including the disposition of funds for their personal use and benefit, is protected and exempted from review or scrutiny by anyone, including this court, by virtue of the First Amendment; and have thereby claimed and continue to claim that they are entitled to dispose of charitable funds as they please.

25. The defendants Church, College and Foundation should be required by this court to comply with their obligations under the laws of the State of California pertaining to nonprofit corporations organized for charitable purposes in all respects, including among others the following: (a) The Church, College and Foundation should be required to select a board of directors, board of trustees, or other board authorized and empowered to oversee and supervise its financial affairs (as distinguished from its

ecclesiastical or spiritual affairs), in such manner as to provide reasonable assurance that the charitable trust funds collected and held by such charitable entities will be applied solely to the charitable uses to which they were donated, and will not be diverted or misapplied for the personal benefit of any individual, or for any other improper purposes; (b) The Church. College and Foundation should be required to take such steps as may be necessary or appropriate to keep and maintain proper records of their financial and business transactions, and to prepare and cause to be rendered periodic accountings of their financial and business affairs as required by law; (c) The Church, College and the Foundation should be required to take such steps as may be necessary or appropriate to prevent the dissipation of charitable trust funds in the future, and to recover such charitable trust funds as have previously been allowed by them to be dissipated or diverted by improper purposes.

26. If and to the extent the Church, College and Foundation cannot be made to comply with their legal obligations in exchange for obtaining the benefits of their status as charitable California corporations, the court should make such other orders and grant such other relief as may be necessary or appropriate under the circumstances to preserve the charitable funds which have been accumulated by them, and which are presently entrusted to their care and custody.

As a Fourth Cause of Action for Receiver, Plaintiff Alleges:

27. Paragraphs 1 through 13 of the First Cause of Action and Paragraphs 15 through 22 of the Second Cause

of Action and Paragraphs 24 through 26 of the Third Cause of Action, are hereby incorporated by reference into and made a part of this Fourth Cause of Action.

28. Based on limited and sporadic statements issued by defendants to the membership of the charitable entities, plaintiff is informed and believes, and on that basis alleges, that they receive approximately $70 million per year in contributions, and that they have a net worth of approximately $80 million. Most of their net worth is held in the form of real estate.

29. Plaintiff is informed and believes, and on that basis alleges, that between January 1, 1975 and the present date, the charitable entities have spent and continue to spend at least $ million more each year than they receive in contributions and, for that reason, have been forced to liquidate some of their holdings in order to defray their current expenditures. All the excess of expenditures over receipts is attributable to the individual defendants' pilfering of the revenues of the charitable entities and their misappropriation of charitable assets to their own personal use and benefit, which pilfering and misappropriation continues to this very day on a massive scale. So long as the individual named defendants remain in full, effective and exclusive control of the business affairs of the charitable entities, they alone will continue in the future, as they have in the past, to determine the nature and extent of all their expenditures.

30. Plaintiff is informed and believes, and on that basis alleges that during the last six months, as part of their program of misappropriating the assets of the charitable

entities to their own use and in order to facilitate said misappropriation, the individual defendants have been liquidating the properties of the charitable entities on a massive scale; and that in Southern California alone, over twenty parcels of property belonging to one or more charitable entities have been sold in the last year, many of them at prices well below their market value.

31. Plaintiff is further informed and believes, and on that basis alleges that one of the largest properties of the College is a 1600-acre parcel in Big Sandy, Texas, which is worth substantially in excess of $10.6 million; yet the individual defendants have been attempting to sell the aforementioned parcel to a third party for approximately $10.6 million; and these defendants have attempted to conceal the true worth of the Big Sandy property, and have instead published false statements, known by them to be false, to the effect that the property aforesaid is worth only about $8 million. All these statements and activities are part of their effort to convert the assets of one or more of the charitable entities into a form in which they may be more easily appropriated to the personal use and benefit of the individual defendants. Further, plaintiff is informed and believes that the defendants have established no procedures or safeguards to ensure that the proceeds of sale of the Big Sandy property, which belong to the College and which ought to be used exclusively for charitable and educational purposes, will be applied to that charitable use; but instead, defendants have announced publicly their intention to "get out of the college business," and to divert the proceeds of said sale to the Church and the Foundation, and to uses other than those for which they are entrusted.

32. Plaintiff is further informed and believes, and thereupon alleges, that the individual named defendants, in an effort to frustrate discovery of their wrongdoing and to obscure the facts, have caused and are causing the written records of their dealings to be removed from the Pasadena offices of the defendant corporations, and to be shredded and destroyed: and that if said removal and destruction are allowed to continue, it may never be possible to develop a true and complete accounting of the finances of the charitable entities during the time period complained of.

33. Since this action was commenced on January 2, 1979, and after a receiver was appointed herein, the individual defendants have pursued a course of conduct designed to divert donations, funds and assets of the charitable entities to themselves at Tucson, Arizona and elsewhere; and thereafter to apply said funds for their personal use and benefit in various ways, including the appointment of numerous firms of attorneys to represent their personal interest while ostensively acting as counsel for the charitable entities. In this regard, the individual defendants have purported to effect an amendment to the bylaws since the commencement of this action, granting them alleged indemnification for their legal expenses, not only in connection with the instant action and any other civil action which has been instituted by them or against them in the state and federal courts, but also for any expenses they may incur in defending against criminal charges arising out of crims or alleged crimes committed by them against the charitable entities (as set forth at pages 11 and 12 of the purported bylaws attached to the Declaration of Helge, Exhibit 8 to this complaint). Plaintiff is

further informed and believes, and thereupon alleges that the defendants have already paid or incurred legal expenses in connection with the present action and related litigation of nearly $1 million, all of which they have paid or intend to pay out of charitable funds properly the property of the charitable entitities herein.

34. The appointment of receiver pendente lite for the charitable entities is necessary forthwith to prevent the continued misappropriation of charitable funds and assets to the personal use and benefit of the individual defendants; to halt the imminent and massive selling-off of valuable properties at prices well below their market value; and to prevent the further destruction of financial and business records of the charitable entities and to conduct an independent investigation of claims which the charitable entities may have against the individual named defendants and others, and thereafter to file and pursue such suits and actions on behalf of the charitable entities as may be appropriate.

As a Fifth Cause of Action for Injunctive Relief Plaintiff Alleges:

35. Paragraphs 1 through 13 of the First Cause of Action, 15 through 22 of the Second Cause of Action, 24 through 26 of the Third Cause of Action, and 28 through 33 of the Fourth Cause of Action are hereby incorporated into and made a part of this Fifth Cause of Action.

36. The Receiver will require access to the books and records, and to the administrative facilities, of the charitable entities in order to discharge his duties, and in order to protect and preserve their assets pendente lite; but the

individual named defendants threaten to deny such access to any person other than themselves, and have demonstrated an intention to remove and destroy said books, records, and facilities, rather than to let any other person see them; and unless enjoined the restrained from doing so by this Court, they will do so, and will not yield up the said assets and records to the receiver.

37. The individual named defendants are engaged in an on-going program of liquidation of charitable assets, and have already entered into agreements to sell many of said properties at prices well below their market value; and unless they and those with whom they deal are enjoined and restrained from doing so by this Court, they will sell, transfer, mortgage, and encumber said properties without providing any safeguards for their preservation and use for the charitable purposes impressed on such assets.

As a Sixth Cause of Action for Accounting Against Defendant Rader, Cornwall, Kessler and Palazzo, Plaintiff Alleges:

37. Paragraphs 1-13 of the First Cause of Action are incorporated by reference into and hereby made a part of this Sixth Cause of Action.

38. Plaintiff is informed and believes and on that basis alleges, that at all times relevant to this complaint, defendants Rader and Cornwall held the beneficial ownership of a majority of, and exercised actual control over, defendant Rader, Cornwall, Kessler and Palazzo, which, until recently was known as Rader, Cornwall and Kessler.

39. Plaintiff is informed and believes and upon that basis alleges that at all times relevant to this complaint

defendant Rader, Cornwall, Kessler and Palazzo acted as the outside accountants for the charitable entities; and in such capacity produced certified financial statements for Worldwide Church of God and Ambassador College, in which they rendered opinions as certified public accountants that such financial statements presented fairly the financial positions of those corporations. Plaintiff is informed and believes and on that basis alleges that as accountants for the charitable entities, defendant Rader, Cornwall, Kessler and Palazzo held a fiduciary position of great trust and confidence vis à vis such charitable entities in the course of which Rader, Cornwall, Kessler and Palazzo rendered financial advice to the management of such charitable entities. In addition plaintiff is informed and believes and on that basis alleges that at all times relevant to this complaint Rader was intimately involved with the management of the charitable entities as personal financial advisor to defendant Herbert W. Armstrong and as attorney for the charitable entities. As a consequence of its assumption of such fiduciary position defendant Rader, Cornwall, Kessler and Palazzo and its partners or shareholders were bound to avoid transactions in which their personal financial interests would conflict with those of the charitable entities.

40. Plaintiff is informed and believes and on that basis alleges that defendants Rader and Cornwall used their positions of trust and confidence with the charitable entities to divert assets of those entities to their benefit, in an amount unknown to plaintiff, by devising, recommending and implementing unfair and fraudulent business transactions between the charitable entities and themselves personally, or between the charitable entities and various of the for-profit defendants in which either or both of them

had ownership interests, or from which they otherwise derived financial benefit, which transactions resulted in personal profit to Rader and/or Cornwall. Plaintiff is informed and believes and on that basis alleges that Rader and Cornwall accomplished the said diversions of charitable assets while acting or purporting to act for and on behalf of defendant Rader, Cornwall, Kessler and Palazzo as partners and/or members thereof.

41. The full nature and extent of the dealings between defendant Rader, Cornwall, Kessler and Palazzo and the charitable entities are not now known to plaintiff, but are peculiarly within the knowledge of defendants. Plaintiff will ask leave of court to amend this complaint to show the exact nature and extent of such dealings when the same have been ascertained.

42. Rader, Cornwall, Kessler and Palazzo are legally required to account to plaintiff for all of the said dealings and transactions between itself and/or its partners, and the charitable entities, and may be surcharged and held liable for any breaches of trust or diversions of charitable assets resulting from such dealings or transactions.

Wherefore Plaintiff Prays:

1. For an order requiring defendants to make a full and complete accounting to this Court of the affairs of the defendant charitable entities from January 1, 1975 through the date of said accounting; and for a further accounting of the third tithe, and of all transactions between any of the defendant charitable entities and any of the individual defendants or the defendant for-profit entities, from January 1, 1970 through the date of said accounting;

2. For an order removing the defendants Rader, Gotoh, Kuhn, Wright, Cornwall, and Helge from holding any office or employment in or under the defendant charitable entities, and cancelling and nullifying any contracts of employment which may have heretofore been entered between them and said entities and further enjoining and restraining said defendants from holding any office of employment under the said charitable entities in the future, or in or under any California charitable corporation trust or charitable organization;

3. For an order directing the defendants Worldwide Church of God, Ambassador College, Inc., and Ambassador International Cultural Foundation to comply with their obligations under the laws of the State of California pertaining to nonprofit organizations organized for charitable purposes; and in the event of their failure so to comply, for such additional equitable relief as may be necessary, appropriate or requisite in the premises to secure the preservation and proper application of the charitable funds presently in their possession and under their control;

4. For an order appointing a receiver pendente lite to take possession, until further order of this Court, of all the property of the defendant charitable entities aforesaid, and of their books and records, and empowering him to take such actions as he deems, in the reasonable exercise of his discretion, appropriate to recover property and assets wrongfully taken from them, and to prevent the further dissipation of charitable property and assets, said power to include without limitation the power to bring lawsuits in the name of the charitable entities, and to retain independent accountants, lawyers, and other professional assistants to assist him in the prosecution of such lawsuits;

5. For an injunction restraining the named individual defendants, their agents, employees, and all persons acting in concert with them, from interfering in any way with the actions of said receiver, and requiring them furthermore to yield up to said receiver all the books, records, and administrative facilities of said charitable entities;

6. For an injunction restraining the named individual defendants, their agents, employees, and all persons acting in concern with them, from selling or mortgaging, or asserting ownership in any other way, over the property or assets of any of the charitable entities, except as the court-appointed receiver may allow;

7. For costs of suit herein;

8. For such other and different or further relief as to this Court may seem just and proper.

DATED: .....

GEORGE DEUKMEJIAN, *Attorney General*
LAWRENCE R. TAPPER,
JAMES M. CORDI,
WILLIAM S. ABBEY,
LAUREN R. BRAINARD,
Deputy Attorneys General

By .....
JAMES M. CORDI
Deputy Attorney General

Attorneys for Plaintiff.

Excerpt From Hearing to Confirm Receiver's Appointment (emphasis added)

REPORTER'S DAILY TRANSCRIPT

Friday, January 12, 1979

• • • • •

[360] . . .

The Court: Mr. Chodos.

Mr. Chodos: Thank you. Your Honor. Your Honor. I have to compliment Mr. Browne on the display of [361] virtuosity. He has spoken for a little over 30 minutes, and every single thing he said is wrong.

He started with the premise that we have a heavy burden of proof. And I suggest to Your Honor that that may be true in an ordinary receivership action between private parties, where private interests are at stake, but where charitable trusts are concerned, it is the opposite which is true.

Once the slightest showing sufficient even to raise the court's eyebrow has been made before the court to suggest that there may perhaps be improprieties in the administration of a charitable trust, the presumptions all operate the other way, and the trustee has the burden of coming forward and showing that everything has been fair and regular, and that burden, Your Honor, has not been carried and no attempt has been made to carry it.

Counsel tells you that a receivership is the most drastic remedy, and that may be where the court attempts to interfere with private rights.

In cases like that, the Fourteenth Amendment and the due process clause of the California Constitution interpose themselves between the court and the private party. But there are no private rights here.

This money is public money. This court is the guardian of it today; it was the guardian of it last week; it was the guardian of it in 1948; and it will continue to be the guardian of this money as long as the charitable trust continues to exist.

[362] And I would suggest to the court that it is no more drastic for the court to replace Mr. Rader as the custodian of this trust with Judge Weisman, than it would be for the court to replace Judge Weisman with someone else. This court has the power to remove and replace trustees of a charitable trust at its pleasure, in order to assure itself that there should never be the slightest question or possibility of dissipation of charitable trust assets.

And the reason for that, Your Honor, is that no one but this court has the power to do that. As Mr. Browne himself has pointed out, and as we have pointed out to you, the people who give this money—not Mr. Kotora, I am not going to speculate whether Mr. Kotora speaks for a hundred thousand members anymore than I am going to speculate whether the people who send me letters and telegrams of congratulations speak for a hundred thousand members. What I do know is that Mr. Armstrong and Mr. Rader and their henchmen, who are part of the palace guard who have been brought here to court to foist off their claims upon you, are the takers, not the givers.

***Ex Parte* Hearing to Appoint a Receiver**

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

No. C 267 607

THE PEOPLE OF THE STATE OF CALIFORNIA, *ex rel.*,
ALVIN EARL TIMMONS, *et al*,

Plaintiffs,

vs.

WORLDWIDE CHURCH OF GOD, INC.,
a California Corporation, *et al*,

Defendants.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

January 2, 1979

[1] (The following proceedings were had in chambers:)

The Court: This is the matter of The People of the State of California, and others, versus Worldwide Church of God. Case Number C 267607.

Mr. Tapper: Lawrence R. Tapper for the California Attorney General.

Mr. H. Chodos: Hillel Chodos and Raphael Chodos for the Relators.

Mr. Gibson: Hugh John Gibson for the relators.

Judge Weisman: Steven S. Weisman.

The Court: All right. I have had an opportunity to read the Complaint; I have read the memorandum of points and authorities, quickly; I have read the declarations of Mr. Chodos, Mr. Gibson, Mr. Chapman. Mr. Morgan, Mr. Timmons, and Shirley Timmons.

Mr. H. Chodos: Your Honor, I wanted to interrupt just to state for the record, a copy of the proposed pleadings was furnished to you this morning. The original is in my briefcase. It has not yet been filed, but we are prepared to file it and pay the necessary fee at any moment.

It is just that we did not want a public filing before coming to see you. I spoke to the clerk this morning and told him we would talk about that.

The Court: Well, we are going to have to get it filed if I am going to grant you any relief, as I am sure I don't have to tell you, Mr. Chodos.

[2] Mr. H. Chodos: Yes, Your Honor. I just wanted to explain.

The Court: What I have read, obviously, are copies of documents which counsel furnished me. I am concerned about the scope of the relief that is sought.

I am concerned about the ex parte nature of the proceedings, and the rather majestic order which would flow from these proceedings without a hearing. I am not unmindful there are charges that dissipation of the properties may occur, and I am also not unmindful of the one cruncher, if you will, which is the proposed sale of the Big Sandy property on January 4th, or the proposed completion.

I have read the declaration pretty carefully. The rest of the matters, and some of the supporting data, obviously, in the length of time afforded to me, I have barely skimmed

through; some of the financial matters which are referred to in one of the declarations—I guess it is Mr. Chapman's declaration—are matters which I have just glanced at; obviously, I haven't digested those in any form.

I would like to be enlightened, perhaps, about how far my writ runs in the first place. Can I really do anything about a real property transaction which is going to close. apparently, in Texas? I don't have anybody before me, as I understand it. I will have somebody before me if I issue this order in due course. Presumably, Mr. Rader or Mr. Herbert Armstrong or somebody will be served.

Let me hear from the Attorney General or from Mr. Chodos, whoever is carrying the ball here.

[3] Mr. H. Chodos: If I can just make a few observations. First of all, I recognize that any request for an ex parte receiver. without notice, has to be viewed against a strong presumption that it is an emergency measure to be used with great caution.

I would suggest to you, however, that at least insofar as pertains to the Worldwide Church of God, Inc., Ambassador College, Inc.. and Ambassador International Cultural Foundation, Inc.. that the usual principles are not applicable.

All of those corporations are organized and existing under California law, exclusively for charitable, religious and educational purposes.

It is our position that a shorthand way of describing the law applicable to the corporations of that type is that their property always and ultimately rests in the Court's custody, and they are always and ultimately subject to the supervision of the Court on the application of the Attorney General. In effect, there are no private interests.

The Court is not taking something away from somebody or interferring with anyone's private rights. In effect,

what we are saying is that there are presently trustees who have been allowed to manage the charitable fund on a day-to-day basis.

There is reason to believe, as we have shown you, that they have not done their job in a faithful manner. We believe that essentially those trustees serve at the Court's pleasure, and may be replaced with a more trustworthy [4] trustee.

The Court: I don't have any quarrel with that up to there, and I think you make a prima facie showing that there may be some serious problems in the administration of this trust.

Mr. Chodos: Now, turning to how far the Court's writ runs. I am inclined to believe that the Court's writ does not run to land outside the State of California.

The Court: I learned it only runs halfway across the dining room table, so as my children want to point out to me, let alone past the State line.

So you have got to give me a little jurisdiction and a little power if you want some help.

Mr. Chodos: It does run, however, to all persons within the Court's jurisdiction, and particularly, to charitable trusts which are organizing and existing under the State of California.

In fact, this Court, as I understand it, is the only court that has complete jurisdiction and supervision over the affairs of these three charitable corporations.

Now, it may be that you will appoint a trustee for these funds, Judge Weisman, and that he will then be confronted with the claims of third parties in Texas.

Now, he, after all, will stand only in the shoes of the present trustees. His rights and privileges will be no greater or no less, and he may have to submit to demands

by the people if they are meritorious, or litigate them if they are questionable, or resist them if they are not. But [5] he has to do that in the name of and on behalf of the charitable funds and this Court.

Now, the real problem, therefore, I don't know what can be done if the land has cnaged hands by the time we get to it, we may have to sue to rescind in the Texas courts.

It is my understanding that a receiver has, under that statute, the power to sue and be sued in other actions on behalf of the interest he represents.

The Court: The order which would be drawn appointing him can specifically grant him that power, and he may have it inherently.

Mr. H. Chodos: That is right. Furthermore, I believe that—Well, let me say, what we are asking here—and it may be that the order—the temporary order perhaps should be more limited in scope than the order to show cause. The one thing that is clear to me that you have the power to do is to appoint a receiver for the three charitable corporations. The other corporations we have named are alleged to be fronts, depositories of charitable funds.

We have substantial reason to believe that that is true and that we can prove it. But it may be that the taking control of those entities and the interference with those entities ought to be postponed until after a hearing has been held.

But for the charitable corporations themselves, we have a substantial chance of emmence dissipation in the immediate future. And in the nature of things, we believe [6] that it would be much more costly, and ultimately, therefore, an unnecessary drain on the charitable trusts to put the receiver in the position of having to rescind a consummated transaction when he might be able to avoid an unconsummated transaction.

Now, I will point out to the Court, too, that if the transaction is not consummated, the chances are good of litigating this matter in California. If they are consummated, the chances are good we will have to litigate it in Texas.

My experience with Texas law is that they have a somewhat different view of the applicable principles than the California courts, and it takes a little while getting acclimated to it.

Now, I don't know if I have answered Your Honor's question about the scope of your writ and the extent of your jurisdiction.

The Court: What about the ex parte nature? I read your moving papers, I read your moving declaration, and someone seems to be alarmed at the potential for file shredding or the destruction of documents or records.

Mr. Tapper: Maybe I could dispel that, Judge.

The Court: Go ahead.

Mr. Tapper: I am reminded of the words of Shirley Hufstedler when she was in the Court of Appeal, and it was no more certain as to the plaintiff's rights in terms of their being finally defined as it is here, but there is strong reason to be suspicious, and she said, "What the defendant [7] suggest is that the plaintiff should take a taste to determine whether it is a mushroom or a toadstool." And that is essentially what we are faced with here.

Nobody can tell Your Honor how many pieces of paper are being shredded per minute, per hour, per day.

The Court: If any.

Mr. Tapper: If any. We do believe that they are being shredded. We don't believe that the information that there

is a shredder in his offices is fictional; but by the same token, we haven't seen the shredder.

The Court: There can also be ligitimate uses for them, although maybe we ought to tell the city attorney that.

Go ahead.

Mr. Tapper: I suppose. But the records we are talking about are public records, just as the assets that Hillel, in describing the charitable organizations, are also public assets.

I share the thought that perhaps it will be premature to use these remedies ex parte as to non-charitable entities at this time, but I am very concerned about the Big Sandy transaction. I am very concerned about the evidence that has been presented to us of some fifty—I haven't seen all the deeds—but it is alleged that there have been fifty real estate transactions in a period of five to six months. That works out to ten per month. So if it is just merely on an averaging basis, there is a virtual certainty that there are going to be some more pieces of real estate that are going to change hands, and that, again, is going [8] to be even further litigation trying to recover the property.

The Court: These are pieces which, as I recall it, have stood in the name of one or more of the charitable corporations and being deeded out to individuals.

Mr. Tapper: That is correct. Ambassador College, for example. I believe that the case of People versus Christ's Church of the Golden Rule is practically on all fours.

I think that what has been presented to us is sufficiently strong that we must take immediate action.

A great deal of effort went into bringing this to Your Honor as early as it has been brought to you, and I would urge the Court to favorably consider the relief, at least as to the charitable entities.

Mr. Chodos: May I add just one thing. People versus Christ's Church of the Golden Rule deals—we quoted extensively from it—emphasizes the difficulties of a plaintiff in the position of the Attorney General or the Relators where information has been withheld. It emphasizes the discretion of the court to grant ex parte relief where the circumstances justify it. But, furthermore, and most important, I want to emphasize that the usual impediment to granting ex parte relief does not exist here.

Normally, in a private property situation where you grant ex parte relief, the court is put in a position of attempting to interfere with someone's rights, and to stop people from doing things that they would otherwise do with their own property, and maybe create great havoc to private interests that have not had an opportunity to be [9] heard, and that is the power that should be exercised with great skepticism and great reservation.

In this case, however, there are no private transactions. In other words, if you appoint an ex parte receiver, all that is going to happen is that he is going to take custody of the records and preserve them; take custody of the money and preserve it; take custody of the causes of action and preserve that; and he is going to be prepared to come back into this court, at any time starting tomorrow morning, that you want to make returnable, or that counsel wants to come in here for an ex parte conference, to vacate the order and talk about it.

But in the interim, what I am really trying to emphasize to you is there is no one whose interests can be hurt. Only protection can be granted by an ex parte order, and there is—

The Court: Well, we could hurt some interests, according to the thrust of what you have spelled out. They would

be interests, if the moving papers are accurate, inappropriately acquired. So we are mindful of that.

Does the record reflect that Judge Weisman is here with us, Patty?

The Reporter: Yes, Your Honor.

The Court: It has been urged that this bowl of spiders be put in your custody. Before I get involved in orders or making orders or granting relief, are you willing to become involved in it?

Judge Weisman: Yes, I am.

[10] The Court: As a receiver?

Judge Weisman: Yes, I am.

The Court: And you see no impediment that would prevent you from acting, if you were thrust—

Judge Weisman: The only impediment I know of is my polio, and that won't prevent me—

The Court: You have managed pretty well with that for some time.

I will tell you on the record that I am a little queasy about putting somebody in charge, but I think you have a showing which warrants some relief.

I would like to discuss with counsel the temporary—proposed restraining order, or order to show cause, because I think we might want to chop it up a little bit in line with the suggestions that have been made about limiting the order to the charitable corporations.

I am addressing your attention to the proposed order appointing temporary receiver, temporary restraining order and order to show cause re receiver and injunction.

Mr. H. Chodos: Would you like to have original order just to work on?

The Court: Might as well work from a copy in case we change things. And we are going to want you to file as soon as we get this—

Mr. H. Chodos: I am prepared to do so.

The Court: Let's go through it with you. Let me see your Complaint, because it names the defendants. And I take it you want this order to run, so far as the order [11] to show cause is concerned. against everybody; is that right?

Mr. H. Chodos: Yes, Your Honor.

The Court: In line with the suggestion about limiting to the charitable corporations, I am looking at Paragraph, Sub-B, on Page 2, at Line 17. Would it be necessary, with that thought in mind. to have limiting language at that point?

Mr. H. Chodos: Well, it seems to me, Your Honor, that at the hearing on the order to show cause, after there is notice, the Court has power to extend the injunction to all the defendants, and that the proper time to limit it is when the responsive showing is made.

The Court: All right. In other words, what you are really saying is that the temporary restraining order is the only one which should be limited, the proposed temporary restraining order.

Mr. H. Chodos: That is our position.

The Court: All right. I have read your bond argument. Are you suggesting that despite what is contained on Page 3, at Line 5, that no bond is required at all?

Mr. H. Chodos: No, Your Honor. We believe that no bond—In a receiver action, there are two bonds. One is from the plaintiff—

The Court: You are talking about the receiver's bond?

Mr. H. Chodos: This is the receiver's bond, and I believe Judge Weisman must post a bond.

The Court: All right. What would you suggest that bond ought to be?

[12] Mr. H. Chodos: Well, the only thing I can say is this, Your Honor: There are $80 million of assets, which would be in Judge Weisman's charge. It is my view that you could put $80 million in crumpled $20 bills in Judge Weisman's briefcase and not worry about it.

The Court: Ruin his briefcase.

Mr. H. Chodos: Yes. It would be, in my opinion—I have spoken to a bonding agent who is prepared to provide a bond, within limits, and he tells me the likely premium is one percent of the face amount. The premium, of course, is a charge on the charitable trust.

I believe, under those circumstances, a relatively nominal bond for a temporary period is appropriate. I would say $1,000, or $10,000 whatever Your Honor considers nominal under those circumstances.

The Court: I am still impressed with $10,000 but I am going to make it a $10,000 bond, and that will, of course, be subject to an argument if this matter comes back to me.

Now, we will need to redraw, it seems to me, Paragraph 3, or will we?

I will hear from you about that.

Mr. H. Chodos: I think in view of Your Honor's remark, all that would need to be done is starting with the words "Wilshire Travel" on Line 13, and extending down to the words "in California" on Line 17, that if that passage would be deleted, that this would conform to what you have indicated.

The Court: That sounds like it would be appropriate, and I am physically deleting on the copy those portions which [13] which you suggest be deleted.

What is the soonest you believe you can get these people served?

Mr. H. Chodos: I am hopeful, Your Honor, making an order today, that we could have these people served by noon tomorrow. Most of them, I think, will not be evading service.

The Court: I will make it by January 4th, at 5:00 PM. Give you a little more time. So far as the return date, that is up to Ms. Follings outside.

Let me say this: Somebody is going to have a career as a judicial officer in this. I am not sure that the limitations which are imposed on this department by the workload, which I just looked at for the next calendar, will permit this matter to remain here.

I think you are going to need somebody in the nature of an all-purpose judge to take hold of this. Now, whether Judge Schauer will do that, whether he will want me to refer it ultimately to Judge Weil to be handled as an overflow matter, I am not sure.

I doubt very much, foreseeing what inevitably has to happen in this case, whether it can be comfortably accommodated on the 8th floor, and allow us to get any other work done, unless everybody caves in, agrees or elects a new board, or something remarkable will happen.

I think what I have indicated is what I will sign as soon as the appropriately filed papers are presented to me. And we'll set down your order, appoint Judge Weisman [14] temporarily, pending the return date.

Mr. Tapper: Do you want to pick a date? Pages 1 or 2.

Mr. H. Chodos: He wants Marjorie to do that.

The Court: I don't know anything about what our calendar problems are. I have a couple of personal calendar problems which invole—one of which involves the 26th of January, at least at current rating.

Mr. H. Chodos: The statute requires within ten days.

The Court: Is it ten? Let's get Marge and get the latest date we can give you. You better get it filed.

Mr. H. Chodos: Yes. If Your Honor please, if we can be excused, I'll go out to your table outside and prepare our papers, get the bond and make all those arrangements.

The Court: I will be here, I am sorry to say.

(Proceedings concluded.)

STATE'S RESPONSE TO APPLICATION FOR STAY OF RECEIVERSHIP

(Undated)

SUPERIOR COURT
OF THE STATE OF CALIFORNIA

For the County of Los Angeles

Case No. C 267607

The People of the State of California, ex rel., ALVIN EARL TIMMONS, et al.

Plaintiffs,

vs.

Worldwide Church of God, Inc., a California Corporation, et al.

Defendants.

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[8] . . .

But, we wish to know whether millions of dollars in expenses for hotels, restaurants, jewelry, cameras and a myriad of other luxury personal items were actually incurred and had a reasonable relationship to church purposes.

State's Response to Application for Stay of Receivership

Where, as here, a dispute does not require the resolution by civil courts of controversies over religious doctrine and practice, no infringement on the parties' First Amendment rights results. *Presbyterian Church v. Hull Church* (1969) 393 U.S. 440, 449.

Respectfully submitted,

GEORGE DEUKMEJIAN, Attorney General,
LAWRENCE R. TAPPER,
JAMES M. CORDI,
WILLIAM S. ABBEY,
LAUREN R. BRAINARD,
Deputy Attorneys General,

By /s/ JAMES M. CORDI,
Deputy Attorney General,

Attorneys for Respondent.

Excerpts From Further Hearing

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Wednesday, February 21, 1979

[136] . . . • • • • •

The Court: . . . .

Now, the fact that I should determine is that the receiver should vacate the premises and let's see if we can get an audit. I have had all kinds of assurances from counsel that they're going to permit that audit to go forward.

Now, maybe they won't. Maybe they're not acting in good faith.

I'm going to make an assumption that they mean what they say, and if it develops that the auditors have any difficulty in that regard, I'm going to make it absolutely clear that the first thing I would do would be to entertain an order to show cause regarding contempt, and I would entertain a motion to place a receiver back in, and I won't hesitate to do it.

And I'm not talking about a receiver who will be supervising, because the next time a receiver goes in, he will be taking full charge. It will be a full-blown receivership with all of the powers of control, operation and the works.

There will be no supervision.

As I say, I want to make that very, very clear, because the court will not permit them to frustrate the orders of the court.

Now, it seems to me that at the present time, the [137] church ought to be given, say, one, and I should possibly

say one final opportunity to demonstrate their good faith and show us they will respond directly to the auditors, and furnish the auditors everything they need, absolutely in good faith and expeditiously.

And, incidentally, so it will not go without being mentioned, I do not accept, Mr. Browne, this argument about ecclesiastical interests prevailing when you are talking about the financial records of this church or any of these corporations.

If this receivership is vacated, and I have one or two petitions come into this court with arguments made that the financial records involve ecclesiastical matters, let me assure you that I will consider that evidence of bad faith, and it will be very strong evidence to me that the receivership ought to be back in there, because I just don't think ecclesiastical matters have anything to do with the financial aspects of the operation out there.

State Of California
Office of the Attorney General
Department of Justice
3580 Wilshire Blvd.
Los Angeles, California 90010
(213) 736-2304

January 31, 1979

Honorable William H "Bill" Ivers
Assemblyman, Forty-Second District
State Capitol
Sacramento, California 95814

Dear Bill:

Before addressing myself to some of the specific questions you have asked with regard to the action filed by my predecessor against the Worldwide Church of God, I would like to give you a little background so that you may understand the nature of the action and our duty to pursue it.

Worldwide Church of God, Inc. is a California corporation created under the general nonprofit code, as are Ambassador College and Ambassador International Cultural Foundation. The only legal distinction between the three organizations lies in the nature of their purposes: religious, educational and cultural, respectively. Federal and state tax exemptions were sought and obtained by each of the corporations, and they have for some years received the benefits, which accrue both publicly and privately from such status as well as from their ability to operate as California corporations. In the eyes of the law, each is deemed to be a charitable organization, holding its assets in trust for the public good.

In recognition of the public interest in charities, it has been consistently held by the courts that the state, has the duty and obligation to oversee the handling of their assets.

In most states, including California, this responsibility falls upon the attorney general.

Accountability and proper disposition of charitable assets are required at all times by all charitable organizations. Moreover, these standards although delicately balanced in the case of religious corporations, nevertheless apply in full force. There are numerous examples of attorney general involvement in such matters as exemplified by *People v. Christ Church*, 79 Cal.App.2d 858; *Metropolitian Baptist Church of Richmond, Inc. v. Younger*, 48 Cal.App.3rd 850; *Queen of Angels Hospital and Franciscan Sisters of the Sacred Heart v. Younger*, 66 Cal.App.3rd 359; *People v. Western Missionary Army*. There are, of course, other cases in which this office has involved itself in the supervision of assets held by religious corporations, many of which were resolved short of trial and appeal. Also, I am sure you must be aware that the United States Supreme Court has carefully delineated in its First Amendment decisions the cases involving church property on the one hand and church doctrine on the other hand.

Turning to the matter now before us, it is important to recognize that the arguments raised by the defendants, both constitutional and otherwise, have received extensive judicial review by three Superior Court judges, four Court of Appeal justices, a United States District Court judge, and are now pending before the California District Court. The record on which Judge Title converted the temporary receivership which was in place for seven days to a full receivership for the pendency of the litigation, was seven inches thick, consisting not only of declarations but also of documentary evidence and live testimony introduced in the course of a three day trial. In denying the petition for removal of the receivership, the Court of Appeal stated that it had read the record and concluded that the relief sought

by petitioners was not justified. Thus, the questions your constituent has raised concerning the sufficiency of evidence of wrongdoing and the appropriateness of our action in seeking and obtaining a receiver have been thoroughly aired and resolved in our favor.

In closing, Bill, let me add that we are constantly mindful of the faith reposed by many in their religious leaders. We also recognize that there are those who would view any legal challenge by the state as an attack on their religious beliefs. Nevertheless, the law imposes an affirmative duty on this office to require trustees of religious organizations to be accountable for all funds and other assets and to not divert them to their own use and enjoyment or to any use other than those authorized to carry out the purpose of the corporation. When, as here, we have evidence of such diversions, we are bound to bring it before the court as the ultimate custodian of all charitable assets. This we have done. The court, in turn, has ordered a receivership as narrowly circumscribed as the circumstances will permit.

I hope this will help in answering your questions and those of your constituents.

Sincerely,

GEORGE DEUKMEJIAN
Attorney General

State Of California
Department of Justice
George Deukmejian
Attorney General
June 21,1979

Mr. Ralph L.Baker
Baker, DeOme, Talarides & Batchelder
Central Building - 14th and Broadway
Oakland, California 94612

Dear Ralph:

It is always nice hearing from you. We enjoyed participating in the Armenian Olympics parade and it was well attended.

In you (*sic*) letter you expressed your concern over actions taken by the Attorney General's office against the Worldwide Church of God, and Faith Center Church. Under the law, each is deemed to be a charitable organization, holding its assets in trust for the public good.

The statutes and court decisions clearly impose a duty upon the Attorney General' office to insure that funds and assets of charitable organizations are used for the purposes stated in the articles of incorporation.

In each case, some members of the church notified the Attorney General's office that funds and assets were being diverted to other uses. Accountability and proper disposition of charitable assets are required at all times by all charitable organizations.

The United States Supreme Court has carefully delineated the cases involving church property on the one hand and church doctrine on the other hand in its First Amendment decisions. Moreover, these standards, although delicately balanced in the case of religious corporations, nevertheless must apply.

Attorney General's Letter to Baker

In the case of the Worldwide Church, you should know that the arguments raised by the defendants, both constitutional and otherwise, have been reviewed by three Superior Court judges, four Court of Appeal justices, a United States District Court judge, and the California Supreme Court has refused to act to terminate the receivership.

The record, which Judge Title used to order a full receivership, was extensive, consisting not only of declarations but also documentary evidence and live testimony introduced during a three-day hearing. Thus, any question concerning the sufficiency of evidence and appropriateness of the action in seeking and obtaining a receiver was thoroughly aired and resolved in our favor, and we have proceeded from that point.

Our office is simply trying to conduct an audit of the books and records of these organizations. If allowed to do so, we would then review all information obtained to determine what legal action, if any, to take, including action to recover, on behalf of the church, funds and assets that may have been wrongfully diverted.

The Morningland case arose when several high ranking former members of the group informed our office that their attorney, Mr. Masry, had informed the leadership of the group that for $10,000 former Lt. Governor Dymally would arrange for a legislative committee to conduct hearings dealing with problems that Morningland was having with city officials of the City of Escondido. We were further informed that Morningland did in fact give the $10,000 to Mr. Masry. This case involves allegations of bribery of a public official and is not in the same category as the Worldwide Church and Faith Center cases.

The ex-parte action taken in the Worldwide case was done prior to my becoming Attorney General, however, the

Attorney General's Letter to Baker

Worldwide Church and the other defendants in that case have continued to refuse to allow us to audit their books and they are doing everything they can to prevent us from carrying out the duty the law has placed upon this office.

Most cordially,
/s/ George
George Deukmejian

CHURCH VERSUS STATE: THE BATTLE LINES ARE DRAWN

Pasadena Star-News
Thursday, September 20, 1979

By Laurinda Keys
Associated Press

A government attorney declares in court that "all church property is state property."

A court-appointed official takes over a church, orders its members to send all donations to him and appoints a new chief minister.

State agents raid a church and confiscate records with the explanation that they're looking for evidence of possible crime. Months pass without charges being filed or the church property being returned.

These aren't developments from behind the Iron Curtain. They all happened within the past year right here in California. Government authorities throughout the state are quietly cracking down on alleged illegalities within religion, drawing the wrath of the faithful who say their First Amendment guarantee of religious freedom is being violated. Many religion and legal observers see this trend toward more government involvement in religion as a backlash to three highly publicized factors:

— The People's Temple mass murder-suicide, which prompted a public outcry for vigilant government examination of violence-prone religious cults.

— The reported brainwashing of young people by some cults, and counter "deprogramming" efforts.

— The apparently huge sums of money collected by charismatic preachers who use mass media.

Some of the more vigorous church vs. state battles erupting in California are based on the state attorney general's enforcement of a little-known state code section.

The law, which exists in only one other state — Texas — is interpreted by state government lawyers as requiring the state to oversee incorporated, nonprofit religious organizations in the same way it watches other non-profit charitable trusts.

The attorney general's office maintains that there is no First Amendment issue involved.

Michael Franchetti, chief deputy to Attorney General George Deukmejian, says he doesn't "see how else we can make sure they are what they say they are and that they are not misusing the charitable funds."

The alleged misuse of funds forms the basis of the state's case against the Worldwide Church of God, probably the most prominent of California's recent church-state conflicts.

The state asked that the church be placed in receivership after six former members of the church charged that Herbert W. Armstrong, who founded the church, and Stanley Radar, the No. 2 man, were squandering donations and using church funds for their personal benefit. The state claims church leaders have pilfered at least $1 million a year over the past four years.

Radar, who denies the accusations, maintains that churches, because they have a special status under the First Amendment should not be lumped with other nonprofit organizations.

"The Members of the Church don't give money to the state of California, they give it to the church" argues Radar.

The state's action against the Worldwide Church of God, founded by a man who claims to be a prophet and Christ's apostle, was taken without notice, without a chance for the

church to argue. A court-appointed receiver arrived with sheriff's deputies at church headquarters in Pasadena and took over the property, records and money.

The receiver removed Armstrong as head of the church and appointed minister Wayne Cole to run the church.

While declining to comment on specific cases, Franchetti said the attorney general's office has two duties under the law:

"First the law protects all citizens against people getting tax-exempt status when they are not entitled to it. And second, there is some feeling that people should be able to have faith that if they contribute to a nonprofit organization, the money is going to be used for the purpose they gave it."

Franchetti added that receivership is sought by the attorney general's office "when there is a fear that assets will be lost"

Though the Worldwide Church of God case has been the most publicized recent church vs. state clash, it's not the only one.

Last summer, the state attorney general demanded that the Faith Center Church in Glendale, headed by flamboyant television preacher Eugene Scott, turn over its records for an investigation of misuse of funds.

Last spring, agents for the attorney general's office raided the Morningland Church in Long Beach, seized records and arrested church members for interfering with the raid. The agents were seeking information on a possible bribe of former Lt. Gov. Mervyn Dymally, the attorney general's office said. No bribery charges have been filed and the records have not been returned.

"We're still working on it." said Tony Cimarusti, spokesman for the attorney general's office. He said that

although the cases of the Worldwide Church of God and the Faith Center may involve "delicate issues," the Morningland case was a criminal matter and "shouldn't be bunched up with the others."

Church vs. state controversies are developing at the local level, too. Grace Community Church, claiming the largest Sunday attendance of a Protestant church in Los Angeles County, was told it could not conduct Bible studies in a church-owned house in suburban Sun Valley without a special zoning variance. However, city officials said the house could be used for a beer party because that wouldn't be church-related.

"I think the only reason there have been more of these antichurch cases in California is because there are more religions here than anywhere else," says John Crossley, USC religion professor.

He and others believe that although churches slightly out of the mainstream have had the worst legal troubles so far, the "mainline" religions will be the next targets.

Tom Butz, business administrator for the Southern California District of the Lutheran Church-Missouri Synod, said his church is currently involved in a court fight with the state over a requirement to pay unemployment tax and disability benefits for its parochial school teachers.

"It gets into the state determining what portion of a teacher's time is spent on religion. That's a First Amendment issue." said Butz.

During the past four years, according to Butz, the church's annual legal costs have increased 40 times over what they had been in the past 20 years, most of it spent fighting new rules or new interpretations of rules by government bureaucracies.

Franchetti says the attorney general's office has been

auditing books and conducting investigations for years with no complaints.

"Individuals tend to confuse the issue when they say our actions are an infringement on religious principle, when the real issue is whether they have carried out their duties under the law," said Franchetti.

He explained that under the law, the duty of a trustee of a nonprofit, charitable organization, even a religious one, is to make sure that expenditures are for the benefit of the organization and that the trustee receives no personal benefit from his actions except a salary.

Franchetti said individuals involved in some recent cases "tried to make a big case to the public" and that they "are confusing the issue by raising the allegation of infringement on religious freedom."

There seems to be little question that it's a confused issue. Even those who believe the state is treading on religious freedom disagree on how and when to fight, or whether to fight at all.

Worldwide's Rader said he would have let the state investigators look at church documents if the court action hadn't been taken. But Andrew Zanger, attorney for Faith Center, said court action or not, the state "is not even going to get to see a voucher for toilet paper."

Sam Ericson, attorney for the fundamentalist, nondenominational Grace Community Church said. "There is a legitimate (government) concern in some of these cases. But instead of being neutral, the government is taking an anti-church position. They're trying to kill the mouse with a shotgun."

He said his church's reaction is to "make sure we don't open ourselves up to those kinds of charges. We have no doctrinal right to protect our books. If the attorney general

wants to look at them, he can. Whether or not he should is a different story."

But what if the government enforced a law that said churches could not discriminate against homosexuals in hiring? "When the government tries to dictate doctrine, that's when I say stay out," Ericson replied. "If there is an area of doctrine that dictates to us as believers, and the government comes in and says you do something else — hire a certain individual — that's where we draw the line and fight."

The First Orthodox Presbyterian Church in San Francisco is engaged in just such a fight. An organist who claims he was fired because he was gay is suing the church under a municipal ordinance that prohibits employers from discriminating on the grounds of sexual preference.

Surprisingly, this and the other church-state conflicts, including the Worldwide Church of God case, have attracted little public or even interfaith support. Except for observers like USC's Crossley, only the members of the churches involved seem to care.

"Because we live in a secular age, few of us can understand the kind of passion that once sent believers smiling to the stake," said Crossley. "The polls say we are believers, but we believe bloodlessly these days.

"This may be why so little public outrage has been voiced at the state of California's intrusion into affairs of the Worldwide Church of God," suggests Crossley.

Without saying directly that the churches in trouble deserved what they got, spokesmen for better known religions say they don't want to get involved in the legal cases of groups such as Worldwide or Morningland.

Monsignor John Dickie, head of the Roman Catholic Conference in Sacramento, said, "We studied the Worldwide Church of God case and decided not to get involved.

It is not an issue that affects us."

Rader acknowledged that his church is somewhat alone in the battle at the moment. "But thank God we have the money and the resources to fight," he said. The case is now before the U.S. Supreme Court.

Rader said court costs, the receiver's expenses and debt incurred because of legal difficulties could end up dissipating the very funds the attorney general intended to protect.

Assistant Attorney General Warren Abbott admitted that possibility. "If our court system doesn't work very well in this case, it is going to eat up the assets," he said.

But if that happens it will be the fault of the church leaders and their lawyers, not the state, he said.

The church representatives "have it within their power to resolve this thing. They could end it immediately" by cooperating with the receiver and dropping pretrial maneuvers, he said.

As in the Worldwide case, the attorney general's office also demanded to see the books and records of Faith Center after ex-members had said Scott was using church money to support his parents and sending money from financially strapped Faith Center to help out his father's church in Oroville, Calif.

Chanting, "No, no, we won't show," Scott fought the order to a stalemate. A higher court now will decide whether the attorney general has the right to demand to see church records.

But even if the Faith Center and Worldwide Church of God are able to prove in higher courts that churches aren't covered by the state law cited by the attorney general, the battle could start again Jan. 1.

That's the effective date of a new state law that specifically cites non-profit corporations with religious purposes as coming under the attorney general's investigative authority.

Zanger feels the state's move into the area of church corruption is a calculated one. "Churches are popular to attack now because of the cults and Guyana," he said. "If you catch one burglar, people say, 'So What?' But if you get a whole group you're gaining results."

Franchetti defends the state's interest on the basis of taxes.

"In a society where everything is taxed, I don't think you can avoid at some point a government agency having to make some judgment regarding a religious organization, even if it's to decide whether or not the organization should be taxed," he said.

"If we don't have some way of insuring that these organizations don't misuse their tax-exempt status, we have no way of being able to make sure that just anyone, regardless of intent, doesn't get tax-exempt status. Otherwise we could all claim to be religions and we would all be exempt from taxes."

Franchetti said that in the same way the attorney general makes sure that funds donated to the American Cancer Society are spent on cancer research, the state Justice Department must make sure that funds donated to a church are used for the church's stated purposes. "You have to look at an individual case and see if what they are doing is to expand the church or convert people or just for the personal benefit of the trustees," he said.

Franchetti also said the government has the authority to remove a trustee of a religious tax-exempt organization if he violates the law. It would be possible for such a person to remain as religious leader of the church but have nothing to do with the finances, he said.

Pasadena Star-News Article

"The question is — What is a church? How do you separate the financial from the ecclesiastical?" says Robert Toms, member of the Christian Legal Society's Center for Law and Religious Freedom.

The difficulty in making this distinction was illustrated when the attorney general tried to show why a receiver was needed to oversee the Worldwide Church of God finances.

People send in their money . . . to do what they believe is God's work. We have shown . . . that the money is not being used for God's work," said the state's attorney.

But should the state be determining God's work? asks Crossley. "It's dangerous when the attorney general starts trying to decide what is the proper and the improper use of church funds," he said.

Toms sums up the whole issue this way: "There has to be balance. Society needs some protection from frauds and bunco artists but religious liberty must be protected."

However, he concedes "the free exercise of religion cannot be without restraint. Churches must obey fire laws, for instance. Because of the gray area some confrontation is inevitable."

"THE FIRST AMENDMENT:
CHURCH VERSUS STATE"
FINAL SCRIPT

Aired 16 January 1980 over KCOP, Los Angeles

[19, by Stanley Rader] . . . .

Wild allegations have been made against me and Mr. Armstrong, Mr. Helge. If they had any evidence of any improprieties of a criminal nature, for example, let them bring those before a grand jury. Let them indict Mr. Armstrong and me and Mr. Helge and others for these alleged improprieties. We know we have committed no wrong of a civil or a criminal nature. But that is the proper forum for those things to be heard. We will be very happy to defend ourselves in that forum. But the church must remain sacrosanct.

STATE'S SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR INJUNCTION PENDING APPEAL

(Dated 16 November 1979)

(emphasis added)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
Case No. CV 79-0183 LEW (TX)

Worldwide Church of God, Inc., et al.,

Plaintiffs,

vs.

State of California, et al.,

Defendants.

I

INTRODUCTION

In a nut shell, what plaintiffs' (*sic*) seek is a ruling that the State cannot assert civil liability against individuals alleged to have breached their fiduciary duties as trustees of a charitable nonprofit corporation by diverting assets to their [2] own use if that corporation is organized for religious purposes. *Having failed to sell that proposition* to any of the Courts of the State of California, to District Judge Robert Firth, or *to the United States Supreme Court, they now come knocking at this Court's door*.

STATE'S NOTICE OF MOTION AND MOTION FOR ORDER HOLDING SPECIFIED DEFENDANTS IN CONTEMPT OF DISCOVERY ORDER OF THIS COURT AND FOR SANCTIONS; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF LAUREN R. BRAINARD IN SUPPORT THEREOF

(Dated 8 February 1980)

SUPERIOR COURT
OF THE STATE OF CALIFORNIA
For the County of Los Angeles
Case No. C 267 607

The People of the State of California, et al.,

Plaintiffs,

vs.

Worldwide Church of God, Inc., a California non-profit corporation, et al.,

Defendants.

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[7] . . .

To date thirteen petitions for extraordinary relief arising out of this case have been denied by the California Court of Appeal, ten petitions for hearing have been denied by the California State Supreme Court, and two petitions for certiorari have been denied by the United States Supreme Court. Nevertheless, defendants have refused, and continue to refuse, to comply with this court's discovery orders.

[12] . . .

To date, thirteen petitions for writ of mandate/prohibition, etc. have been made to the California Court of Appeal. All of those petitions, including all the petitions relevant to the

discovery referred to in this motion, have been denied. In addition, Petitions for Hearing from these denials have been denied by the California State Supreme Court. Petitions for Writ of Certiorari on two questions, the receivership and Rader deposition, have been made to the United States Supreme Court. Those petitions were denied hearing on October 1, and October 15, 1979 respectively. Each of these myriad petitions for appellate court relief have raised substantially the same issues. We need not repeat them here for this court's benefit.

Defendants cited Judge Johnson's remarks regarding the possibility of direction from a higher court as a reason for [13] the appellate courts to take the case. Plaintiff submits that this court has received direction from the appellate courts. The repeated denials of these petitions, all of which argue the same issues which have been repeatedly rejected in this court, constitute an affirmation of this court's rulings. In effect, the appellate courts have spoken in the form of these denials and have upheld the position of this trial court.

ROSEN, REMCHO & HENDERSON
Attorneys at Law
155 Montgomery Street 15th Floor
San Francisco, California 94104
Telephone (415) 433-6830

July 3, 1979

Supreme Court of the State of California
4250 State Building
455 Golden Gate Avenue
San Francisco, CA 94102

Re: *Fred G. Lopez, et al. v. Superior Court, et al.* 2nd Civil No. S6459

To the Honorable Chief Justice and Associate Justices of the California Supreme Court:

Introduction

On behalf of the National Council of Churches in the U.S.A., (''the National Council''), we are writing to urge the Court to grant the plaintiffs' petition for hearing in the above-captioned case.

This case is one of several that arose out of receivership proceedings involving the Worldwide Church of God. These plaintiffs are taxpayers and concerned members of the Church who have been denied permission to intervene in the case-in-chief against the Church, *People of the State of California v. Worldwide Church of God*, Los Angeles Superior Court Case No. C 267607. The National Council of Churches supports their petition because it directly challenges the constitutionality of California Corporations Code Section 9505 as applied to religious groups organized as non-profit corporations. Should this Court grant the petition for hearing, the National Council of Churches will seek leave to file a brief *amicus curiae* in support of petitioners.

Statement of Interest and Support

The National Council of Churches in the U.S.A. is a cooperative agency of thirty-two national Christian religious bodies having an aggregate membership of over 40,000,000. Many of the National Council's member organizations are organized as religious non-profit corporations. The National Council itself has a number of affiliates which are similarly organized. These include the Interfaith Center on Corporation Responsibility, a New York corporation, and CROP, an Illinois corporation with offices in California organized for the purposes of raising food to relieve world hunger.

The National Council of Churches is deeply concerned about the serious invasions of First Amendment freedom that have occurred in the *Worldwide Church of God* receivership proceedings. Quite frankly, the National Council has never before encountered such a sustained and destructive governmental assault on religious freedom. The Church's reports of the State's activities would be almost unbelievable were they not supported in full by court transcripts and written documents.

The crux of the State's argument appears to be that by incorporating as a religious non-profit corporation, the Worldwide Church of God thereby waived its basic First Amendment rights, as well as its right to claim the clergy-penitent and attorney-client privileges. Alternatively, the State appears to argue that none of these rights have as yet been infringed, despite the fact that State officials literally ran the Church between January 2, 1979 and March 2, 1979 and would be running it still had not an appeal intervened. Moreover, the State's argument that it has not violated any constitutional protections apparently ignores the fact that the Receiver has fired Church employees, scrutinized church records, including membership lists and confidential communications, and intercepted and stopped a communication from the pastor to the Church's membership worldwide. In addition, both the State and the trial court contend that it is the prerogative of the courts to determine whether a matter is ecclesiastical as opposed to business or financial in nature, thus coming within the Receiver's jurisdiction and control. As is ably pointed out in the petitions for hearing filed in this and other related cases, the State's contentions fly in the face of virtually every recent decision by the Supreme Court of the United States concerning the relationship between church and state.

We urge you to accept this case for hearing in order to resolve the fundamental questions which it raises about the proper role of the State in church affairs.

Respectfully submitted,

SANFORD JAY ROSEN,
ROBIN B. JOHANSEN,
ROSEN, REMCHO & HENDERSON,
By /s/ Robin B. Johansen

Attorneys for the National Council of Churches in the U.S.A.